

<p style="text-align: right;">1</p> <p>1 UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN</p> <p>2</p> <p>3 CONSOLIDATED WATER POWER COMPANY, 4 Plaintiff, 5 v. Case No. 10-CV-397-bbc 6 0.46 ACRES OF LAND, MORE OR LESS, IN PORTAGE COUNTY, WISCONSIN, ROBERT D. 7 MOODIE, and UNKNOWN OTHERS, 8 Defendants.</p> <hr/> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14 DEPOSITION OF ROBERT D. MOODIE, 15 witness in the above-entitled action, taken under the provisions of Chapter 804, 16 Wisconsin Statutes, before Meredith A. Kroening, a Notary Public in and for the 17 State of Wisconsin, at the offices of First Law Group, 2900 Hoover Road, Suite A, 18 Stevens Point, Wisconsin on the 28th day of April, 2011, commencing at 9:00 a.m. and 19 terminating at 11:49 a.m. 20 * * * 21 22 23 24 25</p>	<p style="text-align: right;">3</p> <p>1 WITNESS INDEX</p> <p>2 WITNESS: EXAMINATION BY: PAGE:</p> <p>3 Robert D. Moodie Mr. Lee 4 - 128</p> <p>4</p> <p>5</p> <p>6</p> <p>7 EXHIBIT INDEX</p> <p>8</p> <p>9 NUMBER: MARKED:</p> <p>10 1 - Notice of condemnation 29</p> <p>11 2 - Drawing of five parcels 34</p> <p>12 3 - DNR permit 59</p> <p>13 4 - May 22, 2007 letter from Mark Anderson 103</p> <p>14 5 - Green Circle Trail agreement 112</p> <p>15 6 - Responses to proposed findings of fact 117</p> <p>16 (Original exhibits attached to original transcript; copies attached to transcript copies.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>14 OBJECTION INDEX</p> <p>15 BY: PAGE:</p> <p>16 (No objections were made during the taking of this deposition.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21 REQUESTS</p> <p>22 ITEM: PAGE:</p> <p>23 Comparables 75</p> <p>24</p> <p>25</p>
<p style="text-align: right;">2</p> <p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 FOR THE PLAINTIFF: FOLEY & LARDNER, LLP ATTORNEY MATTHEW D. LEE 4 150 East Gilman Street Madison, WI 53703-1481</p> <p>5</p> <p>6</p> <p>7 DEFENDANT ROBERT D. MOODIE PRO SE</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">4</p> <p>1 ROBERT D. MOODIE,</p> <p>2 called as a witness, after being first</p> <p>3 duly sworn, was examined and testified</p> <p>4 as follows:</p> <p>5 EXAMINATION</p> <p>6 BY MR. LEE:</p> <p>7 Q Can you state your name -- your full name</p> <p>8 for the record, please?</p> <p>9 A Robert D. Moodie.</p> <p>10 Q And can you spell your last name, please?</p> <p>11 A M-o-o-d-i-e.</p> <p>12 Q What is your address, Mr. Moodie, your</p> <p>13 home address?</p> <p>14 A 2401 Rainbow Drive, Plover, Wisconsin</p> <p>15 54467.</p> <p>16 Q And what is your date of birth?</p> <p>17 A November 15, 1946.</p> <p>18 Q Are you married?</p> <p>19 A Yes.</p> <p>20 Q Do you have children?</p> <p>21 A Yes.</p> <p>22 Q How many?</p> <p>23 A Two.</p> <p>24 Q We do the easy questions first. Have you</p> <p>25 ever been deposed before?</p>

<p style="text-align: right;">5</p> <p>1 A Not that I can recall.</p> <p>2 Q I'll give you some basic guidelines for</p> <p>3 the deposition. I ask that you answer my</p> <p>4 questions with an audible answer like yes</p> <p>5 or no rather than a head nod or a head</p> <p>6 shake or a shrug or something. Do you</p> <p>7 understand?</p> <p>8 A Yes.</p> <p>9 Q And if at any time you don't understand a</p> <p>10 question that I ask, will you let me</p> <p>11 know?</p> <p>12 A Yes.</p> <p>13 Q And if at any time you feel you need to</p> <p>14 go back and correct one of your previous</p> <p>15 answers, will you let me know so we can</p> <p>16 go back and do that?</p> <p>17 A Yes.</p> <p>18 Q If at any time you need to take a break,</p> <p>19 just let me know, and we can do that. I</p> <p>20 only ask that if you feel you have to</p> <p>21 take a break and I've submitted a</p> <p>22 question to you, you answer the question</p> <p>23 before we take a break. Does that sound</p> <p>24 okay?</p> <p>25 A Yes.</p>	<p style="text-align: right;">7</p> <p>1 Q Which documents did you review?</p> <p>2 A I tried to read the civil procedures.</p> <p>3 Q Okay. Any other documents?</p> <p>4 A No.</p> <p>5 Q Did you meet with a lawyer?</p> <p>6 A No.</p> <p>7 Q And you're not being represented by a</p> <p>8 lawyer today, correct?</p> <p>9 A That's correct.</p> <p>10 Q You understand you're allowed to have</p> <p>11 counsel present today on your behalf,</p> <p>12 correct?</p> <p>13 A Yes.</p> <p>14 Q You nevertheless have decided of your own</p> <p>15 volition not to have counsel present,</p> <p>16 right?</p> <p>17 A Yes.</p> <p>18 Q Trial is coming up next month. Do you</p> <p>19 intend to represent yourself at trial?</p> <p>20 A At this point, yes. It might change.</p> <p>21 Q Let's talk a little bit about your</p> <p>22 background. What high school did you</p> <p>23 attend?</p> <p>24 A Ripon High School.</p> <p>25 Q In Ripon, Wisconsin?</p>
<p style="text-align: right;">6</p> <p>1 Q Do you understand these instructions?</p> <p>2 A Uh-huh. Yes.</p> <p>3 Q There you go. I know that you've</p> <p>4 recently had some medical operations, and</p> <p>5 I wanted to make sure that you don't feel</p> <p>6 that any medications you're taking would</p> <p>7 in any way impair your testimony today.</p> <p>8 Would you agree with that statement?</p> <p>9 A Yes.</p> <p>10 Q Is there any reason sitting here today</p> <p>11 that you won't be able to answer my</p> <p>12 questions completely and truthfully?</p> <p>13 A Not unless I don't know the answer.</p> <p>14 Q And if you don't know the answer you just</p> <p>15 say you don't know the answer.</p> <p>16 A Yes.</p> <p>17 Q Okay. Did you do anything to prepare for</p> <p>18 this deposition?</p> <p>19 A I -- I guess so, yes.</p> <p>20 Q What did you do?</p> <p>21 A Just tried to think ahead of what might</p> <p>22 be coming at me. I didn't have any</p> <p>23 counsel or anything.</p> <p>24 Q Did you review documents?</p> <p>25 A A few, yes.</p>	<p style="text-align: right;">8</p> <p>1 A Yes.</p> <p>2 Q And when did you graduate?</p> <p>3 A 1965.</p> <p>4 Q Did you attend college?</p> <p>5 A Yes.</p> <p>6 Q What college did you attend?</p> <p>7 A Oshkosh State University.</p> <p>8 Q When did you graduate?</p> <p>9 A 1969.</p> <p>10 Q And what degree did you graduate from</p> <p>11 Oshkosh with?</p> <p>12 A Business administration.</p> <p>13 Q What was your major? Business</p> <p>14 administration?</p> <p>15 A Right.</p> <p>16 Q Okay. So you received a bachelor's</p> <p>17 degree in business administration from</p> <p>18 Oshkosh, correct?</p> <p>19 A Yes.</p> <p>20 Q Do you have any further educational</p> <p>21 training beyond that degree?</p> <p>22 A No.</p> <p>23 Q Where are you currently employed?</p> <p>24 A Moodie, Incorporated.</p> <p>25 Q What business does Moodie, Incorporated</p>

<p style="text-align: right;">9</p> <p>1 perform?</p> <p>2 A Trucking business.</p> <p>3 Q And when you say the trucking business,</p> <p>4 what do you mean?</p> <p>5 A We haul freight.</p> <p>6 Q Would you say that you operate</p> <p>7 nationally?</p> <p>8 A We have authority to run in all 48</p> <p>9 states, but we are confined mostly to the</p> <p>10 Midwest.</p> <p>11 Q What's your position at Moodie,</p> <p>12 Incorporated?</p> <p>13 A Vice president.</p> <p>14 Q And what do your duties entail?</p> <p>15 A Office, some bookkeeping, payroll,</p> <p>16 purchasing.</p> <p>17 Q Are you a part owner of the company?</p> <p>18 A Yes.</p> <p>19 Q Who do you share ownership with?</p> <p>20 A My brother.</p> <p>21 Q What's your brother's name?</p> <p>22 A David.</p> <p>23 Q David Moodie, right?</p> <p>24 A Right.</p> <p>25 Q Did you and your brother start the</p>	<p style="text-align: right;">11</p> <p>1 graduated from Oshkosh until you started</p> <p>2 at Bluemke?</p> <p>3 A No. I think I -- I drove truck in there</p> <p>4 for maybe a half a year when I got out of</p> <p>5 the service. I drove truck for six</p> <p>6 months or a year, something like that.</p> <p>7 Q Let me just make sure I have the</p> <p>8 chronology correct. You graduated</p> <p>9 from --</p> <p>10 A Oshkosh.</p> <p>11 Q -- Oshkosh State University in 1969?</p> <p>12 A I was immediately drafted.</p> <p>13 Q And you served for about two years in the</p> <p>14 Army?</p> <p>15 A Uh-huh.</p> <p>16 Q Yes?</p> <p>17 A Yes.</p> <p>18 Q And then you drove a truck for six to 12</p> <p>19 months?</p> <p>20 A Yeah. Something like that. Yeah.</p> <p>21 Q And --</p> <p>22 A Then I went to the hardware store -- it's</p> <p>23 a hardware store.</p> <p>24 Q Bluemke is a hardware store?</p> <p>25 A Right.</p>
<p style="text-align: right;">10</p> <p>1 company?</p> <p>2 A Yes.</p> <p>3 Q What year did you start it?</p> <p>4 A 1973.</p> <p>5 Q And have you worked at Moodie,</p> <p>6 Incorporated since 1973?</p> <p>7 A Yes.</p> <p>8 Q Have you had any other jobs since 1973?</p> <p>9 A No.</p> <p>10 Q What did you do before you and your</p> <p>11 brother started Moodie, Incorporated?</p> <p>12 What did you do for a living?</p> <p>13 A I did some bookkeeping. And then I was</p> <p>14 in the service before that.</p> <p>15 Q Where did you do bookkeeping?</p> <p>16 A Bluemke in Rosendale, Wisconsin. I was</p> <p>17 there for maybe a year.</p> <p>18 Q And before that you said you were in the</p> <p>19 service?</p> <p>20 A Right.</p> <p>21 Q What branch of the military?</p> <p>22 A Army.</p> <p>23 Q Did you serve in Vietnam?</p> <p>24 A No.</p> <p>25 Q Were you in the Army from the time you</p>	<p style="text-align: right;">12</p> <p>1 Q You did that for about a year?</p> <p>2 A Yeah.</p> <p>3 Q And then you and your brother started</p> <p>4 Moodie, Incorporated?</p> <p>5 A Right.</p> <p>6 Q And you've been there ever since?</p> <p>7 A Right.</p> <p>8 Q Now, in your summary judgment response</p> <p>9 brief you described yourself as -- and</p> <p>10 I'm quoting -- a private citizen who</p> <p>11 occasionally invests in real estate</p> <p>12 ventures for the purpose of profit?</p> <p>13 A Right.</p> <p>14 Q What do you mean by that?</p> <p>15 A I bought raw land here in Plover,</p> <p>16 subdivided it, 50 lots, sold them. I</p> <p>17 bought raw land in Wisconsin Rapids, 200</p> <p>18 acres on the edge of town, held it for</p> <p>19 some years, cut the trees, cleaned it up,</p> <p>20 moved high lines and sold it to the City</p> <p>21 of Wisconsin Rapids for the east side</p> <p>22 industrial park. I did a 15-acre</p> <p>23 subdivision in Wisconsin Rapids with 20</p> <p>24 lots and then bought this property in</p> <p>25 downtown Stevens Point.</p>

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<p>1 Q The property that's the subject of the</p> <p>2 lawsuit?</p> <p>3 A Right. I had an 84-lot mobile home park</p> <p>4 in Pensacola, Florida.</p> <p>5 Q When you say you had it, did you purchase</p> <p>6 it?</p> <p>7 A Yes, and sold it. And then I invested in</p> <p>8 Travis Towers, Houston, Texas, a 22-story</p> <p>9 office building and parking ramp,</p> <p>10 downtown Houston. And I sold that, my</p> <p>11 share --</p> <p>12 Q When did you sell it? I'm sorry.</p> <p>13 A I sold my share of that.</p> <p>14 Q So we've got the raw land in Plover, raw</p> <p>15 land in Wisconsin Rapids, 200 acres.</p> <p>16 We've got a 15-acre subdivision in</p> <p>17 Wisconsin Rapids. We've got the land</p> <p>18 that abuts the Stevens Point reservoir,</p> <p>19 which is the subject of this lawsuit. An</p> <p>20 84-lot mobile home park in Pensacola,</p> <p>21 Florida.</p> <p>22 A Which I bought and sold.</p> <p>23 Q Which you bought and sold. You owned a</p> <p>24 portion of the Travis Towers in Houston,</p> <p>25 Texas, which is a 22-story office</p>	<p>1 Q Do people hunt on it?</p> <p>2 A I don't, but some people do, yeah.</p> <p>3 Q Okay.</p> <p>4 A I have a one-acre lot in the City of</p> <p>5 Ripon industrial park.</p> <p>6 Q Is it a vacant lot?</p> <p>7 A Yes. Okay. I think that's it.</p> <p>8 Q Have you ever worked in the real estate</p> <p>9 business? Strike that. Have you ever</p> <p>10 worked for a real estate company?</p> <p>11 A No.</p> <p>12 Q Are you a licensed real estate agent?</p> <p>13 A No.</p> <p>14 Q Have you ever done appraisal work?</p> <p>15 A Just for myself. Not -- I never hired</p> <p>16 out, no.</p> <p>17 Q Are you a licensed appraiser?</p> <p>18 A No.</p> <p>19 Q When you say you did appraisal work for</p> <p>20 yourself, what do you mean by that?</p> <p>21 A Well, I'm capable of going to the</p> <p>22 courthouses and getting comparables and</p> <p>23 things like that, same as appraisers do.</p> <p>24 Q When you -- can you describe your process</p> <p>25 of appraising a property, the process you</p>
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<p>1 building and parking ramp?</p> <p>2 A Right.</p> <p>3 Q Any other real estate ventures you've</p> <p>4 been involved in besides your own</p> <p>5 personal residential real estate?</p> <p>6 A I own some farm land.</p> <p>7 Q Where's the farm land?</p> <p>8 A I have 35 acres in the Town of Ripon,</p> <p>9 Fond Du Lac County. 80 acres town of Eau</p> <p>10 Pleine, Portage County.</p> <p>11 Q Town of Plain?</p> <p>12 A Eau Pleine, E-a-u --</p> <p>13 Q Eau Pleine, okay.</p> <p>14 A P-l-e-i-n-e.</p> <p>15 Q And is that farm land also?</p> <p>16 A Right. 77 acres Town of Rudolph in Wood</p> <p>17 County.</p> <p>18 Q Also farm land?</p> <p>19 A Uh-huh. It's half farm, half recreation.</p> <p>20 Q You say recreation. What do you mean?</p> <p>21 A It's the -- I think that's the category</p> <p>22 that it's being taxed as. I would guess</p> <p>23 they call it hunting land, I suppose.</p> <p>24 Maybe that's why they -- it's taxed</p> <p>25 higher than the farm land.</p>	<p>1 use?</p> <p>2 A Go to the register of deeds, look up</p> <p>3 properties that were sold, see how much</p> <p>4 they were sold for and see how they were</p> <p>5 developed, what use they had.</p> <p>6 Q How do you determine whether a piece of</p> <p>7 property is comparable to a piece of</p> <p>8 property that you're interested in buying</p> <p>9 or selling?</p> <p>10 A Its location and how it's used.</p> <p>11 Q Any other factors that you use?</p> <p>12 A I suppose. I can't think of them right</p> <p>13 now.</p> <p>14 Q I can give you a minute to think about</p> <p>15 them. It's of interest to me.</p> <p>16 A What features it has.</p> <p>17 Q Meaning improvements?</p> <p>18 A Yeah. Characteristics.</p> <p>19 Q Topography?</p> <p>20 A Uh-huh.</p> <p>21 (At this time, the court</p> <p>22 reporter admonished the witness</p> <p>23 to answer verbally.)</p> <p>24 THE WITNESS: Yes.</p> <p>25 EXAMINATION</p>

<p style="text-align: right;">17</p> <p>1 BY MR. LEE:</p> <p>2 Q Any other factors that you can think of?</p> <p>3 Right now we've got the location of the</p> <p>4 property, how the property is used and</p> <p>5 the features of the property, including</p> <p>6 the improvements and the topography of</p> <p>7 the property.</p> <p>8 A Sale prices, of course.</p> <p>9 Q How do you compare sale prices? Like</p> <p>10 what kind of prices are you comparing?</p> <p>11 A What a similar property sold for compared</p> <p>12 to my property or another property that</p> <p>13 I'm looking at. I imagine it's the same</p> <p>14 procedure that an appraiser uses.</p> <p>15 Q I think I understand what you're saying,</p> <p>16 but I just want to clarify. You look at</p> <p>17 the sale price of a property you think is</p> <p>18 comparable based on the factors you just</p> <p>19 listed, and you take that and determine</p> <p>20 how much you think your property should</p> <p>21 or would sell for, correct? Right?</p> <p>22 A I suppose that's what I'm saying.</p> <p>23 Q Okay. That's fine. The reason I asked</p> <p>24 you again is because I think we talked</p> <p>25 over each other, and I wanted to clear it</p>	<p style="text-align: right;">19</p> <p>1 it and how much you sold it for and, if</p> <p>2 you do still own it, how much you think</p> <p>3 it's worth. Does that sound okay?</p> <p>4 A All right.</p> <p>5 Q Let's start with the raw land in Plover</p> <p>6 that you subdivided into 50 lots. I take</p> <p>7 it you don't own any of that anymore?</p> <p>8 A I don't own any anymore.</p> <p>9 Q You sold all 50 lots?</p> <p>10 A Right.</p> <p>11 Q When did you subdivide that property?</p> <p>12 A I'm guessing about 1996 or '7 I started,</p> <p>13 something like that.</p> <p>14 Q And were you the seller of each of the 50</p> <p>15 lots?</p> <p>16 A A broker actually did the paperwork.</p> <p>17 Q Each of the buyers bought the lot from</p> <p>18 you as opposed to some LLC or some third</p> <p>19 party, correct?</p> <p>20 A Right.</p> <p>21 Q Obviously, we're not going to go through</p> <p>22 all 50 lots. But did you sell the lots</p> <p>23 for roughly or approximately on average</p> <p>24 what you thought they were worth?</p> <p>25 A Yes.</p>
<p style="text-align: right;">18</p> <p>1 up for the record.</p> <p>2 A I don't like answering leading questions</p> <p>3 but --</p> <p>4 Q Well, if I were to go through the list of</p> <p>5 properties you just gave me that you have</p> <p>6 an ownership interest in and asked you</p> <p>7 for what you believe the approximate</p> <p>8 value of each of those properties are,</p> <p>9 would you be able to tell me?</p> <p>10 A I could tell you what I would sell them</p> <p>11 for probably.</p> <p>12 Q Okay.</p> <p>13 A Now, it might be more than what you think</p> <p>14 they're worth, but that's what they're</p> <p>15 worth to me. So --</p> <p>16 Q Well, and actually I'm going to go</p> <p>17 through the properties anyway because I'm</p> <p>18 not clear on which ones you still own.</p> <p>19 A Okay.</p> <p>20 Q I'll start with the first one you listed,</p> <p>21 which is the raw land in Plover, and I'll</p> <p>22 work my way down the list. And for each</p> <p>23 one I'll ask you if you still own it.</p> <p>24 A Okay.</p> <p>25 Q If you don't still own it, when you sold</p>	<p style="text-align: right;">20</p> <p>1 Q Moving on to the raw land in Wisconsin</p> <p>2 Rapids, the 200-acre land, you said you</p> <p>3 held that for a while and then sold it to</p> <p>4 the City of Wisconsin Rapids for</p> <p>5 industrial development, correct?</p> <p>6 A Uh-huh.</p> <p>7 Q Yes?</p> <p>8 A Yes.</p> <p>9 Q When did you sell it to the city?</p> <p>10 A Oh, I -- it was over -- I can't say for</p> <p>11 sure. It was in the early '90s.</p> <p>12 Q That's fine.</p> <p>13 A And it was -- they paid for it over a</p> <p>14 period of three or four years, too. They</p> <p>15 didn't pay for it all at once.</p> <p>16 Q Did they buy all 200 acres in one</p> <p>17 transaction?</p> <p>18 A Right. Right. But they just delayed</p> <p>19 payments over, I think, a three-year</p> <p>20 period or four.</p> <p>21 Q Do you recall what the sale price was,</p> <p>22 approximately?</p> <p>23 A 500,000.</p> <p>24 Q You also said that you owned a 15-acre</p> <p>25 subdivision in Wisconsin Rapids. Strike</p>

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<p>1 that. You had had a 15-acre lot that you</p> <p>2 subdivided into 20 lots?</p> <p>3 A Right.</p> <p>4 Q And when did you -- when did you</p> <p>5 subdivide it? When did it become</p> <p>6 subdivided?</p> <p>7 A It was probably -- probably around the</p> <p>8 year 2000, 2001 or '2, in there some</p> <p>9 place. I'm sorry.</p> <p>10 Q Approximate dates are fine. I know we're</p> <p>11 going back a ways.</p> <p>12 A Yeah. Yeah.</p> <p>13 Q And have you sold all 20 lots?</p> <p>14 A No. I sold five.</p> <p>15 Q Are the lots all of equal size?</p> <p>16 A No.</p> <p>17 Q What is the range of the size of the</p> <p>18 lots?</p> <p>19 A Half acre to three-quarter acre.</p> <p>20 Q What is the range of prices that you're</p> <p>21 seeking?</p> <p>22 A 26, 27 thousand.</p> <p>23 Q And the five that you sold, did you get</p> <p>24 about that price?</p> <p>25 A Uh-huh.</p>	<p>1 Q After you sold the mobile home park you</p> <p>2 purchased an ownership interest in the</p> <p>3 Travis Towers in Houston, Texas, correct?</p> <p>4 A Correct.</p> <p>5 Q How did you get connected with that?</p> <p>6 A I -- I have a friend in Alabama that</p> <p>7 is -- knows investment opportunities.</p> <p>8 And he told me about it.</p> <p>9 Q How long were you -- how long did you</p> <p>10 have an ownership interest in that</p> <p>11 property?</p> <p>12 A Probably three years.</p> <p>13 Q So you sold it in about 2007?</p> <p>14 A Probably. Or '8.</p> <p>15 Q And how much did you sell that for?</p> <p>16 A I think -- I think it was -- I think</p> <p>17 940,000. I'm not exactly sure on that.</p> <p>18 Q And again was that more or less or about</p> <p>19 what you thought it was worth?</p> <p>20 A That's what I thought it was worth.</p> <p>21 Q You say you hold 35 acres of farm land in</p> <p>22 the Town of Ripon?</p> <p>23 A Right. Yes.</p> <p>24 Q Right is a fine answer.</p> <p>25 A Okay.</p>
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<p>1 Q Yes?</p> <p>2 A Yes.</p> <p>3 Q I'll skip the land that abuts the Stevens</p> <p>4 Point reservoir for now. We're going to</p> <p>5 talk about that a lot. Skip to the</p> <p>6 84-lot mobile home park in Pensacola,</p> <p>7 Florida. Now, you said that you</p> <p>8 purchased that as one single piece of</p> <p>9 land, right?</p> <p>10 A Right.</p> <p>11 Q Did you subdivide that?</p> <p>12 A No.</p> <p>13 Q So did you just then lease spots to</p> <p>14 mobile home residents?</p> <p>15 A Right.</p> <p>16 Q How long did you own that property for?</p> <p>17 A Probably ten years.</p> <p>18 Q When did you sell it?</p> <p>19 A Let's see. 2005 probably. Or '4. 2004</p> <p>20 maybe.</p> <p>21 Q Do you recall how much you sold it for?</p> <p>22 A 825,000.</p> <p>23 Q And was that more or less or about the</p> <p>24 same as what you thought it was worth?</p> <p>25 A That's what it was worth.</p>	<p>1 Q Just uh-huh or huh-uh don't work well.</p> <p>2 And when did you buy that, that farm</p> <p>3 land?</p> <p>4 A Year-and-a-half ago.</p> <p>5 Q And how much did you pay for it?</p> <p>6 A 120,000.</p> <p>7 Q Are you looking to sell it?</p> <p>8 A Not necessarily.</p> <p>9 Q Not actively?</p> <p>10 A No.</p> <p>11 Q How much do you think that land is worth</p> <p>12 right now?</p> <p>13 A Probably 130.</p> <p>14 Q You also said that you own 80 acres of</p> <p>15 farm land in the Town of Eau Pleine?</p> <p>16 A Yes.</p> <p>17 Q When did you buy that?</p> <p>18 A Probably 15 years ago.</p> <p>19 Q 15 years ago?</p> <p>20 A Yeah. At least.</p> <p>21 Q So that's 1996?</p> <p>22 A Might even have been sooner than that.</p> <p>23 Maybe 1990 even. Time goes fast. 1995,</p> <p>24 somewhere in there.</p> <p>25 Q Do you remember how much you paid for it?</p>

25	27
<p>1 A I believe it was 46,000.</p> <p>2 Q And how much do you think it's worth now?</p> <p>3 A Well, the DNR has been trying to buy it.</p> <p>4 I've turned down, I don't know, 160 or</p> <p>5 something. It's probably worth 200,000.</p> <p>6 Q Are you actively trying to sell that</p> <p>7 property?</p> <p>8 A No.</p> <p>9 Q You also said you own 77 acres of farm</p> <p>10 and recreation land in the Town of</p> <p>11 Rudolph in Wood County; is that correct?</p> <p>12 A Correct.</p> <p>13 Q And when did you buy that land? We're</p> <p>14 almost to the end. It's this one and one</p> <p>15 more.</p> <p>16 A That's got to be ten years ago.</p> <p>17 Q Do you remember what you paid for it?</p> <p>18 A 60,000.</p> <p>19 Q How much do you think it's worth now?</p> <p>20 A I'd say 180,000.</p> <p>21 Q Have you made any improvements to that</p> <p>22 property since you bought it?</p> <p>23 A I haven't personally, no. Some people do</p> <p>24 farm it, and they've improved the land by</p> <p>25 fertilizing it. But I've never done</p>	<p>1 diligence before I bought anything.</p> <p>2 Q And what do you mean by due diligence?</p> <p>3 A Make sure the land is as it's advertised,</p> <p>4 as it's being sold, you know, that it's</p> <p>5 worth what I'm paying for it and it</p> <p>6 has -- I'll leave it there.</p> <p>7 Q Do you think that the work you do to</p> <p>8 appraise property -- well, strike that.</p> <p>9 Do you think you're as qualified an</p> <p>10 appraiser as any licensed appraiser? An</p> <p>11 appraiser of real estate, I mean.</p> <p>12 A State the question again.</p> <p>13 Q Sure. You've spent a lot of time</p> <p>14 inspecting property, examining property,</p> <p>15 appraising property. Would you agree?</p> <p>16 A Yes.</p> <p>17 Q Do you think you're pretty good at it?</p> <p>18 A I've been successful at it.</p> <p>19 Q Do you think that your ability to</p> <p>20 appraise a property is equal to, say, a</p> <p>21 licensed appraiser?</p> <p>22 A I think my ability is -- I know I don't</p> <p>23 have the procedures that they use,</p> <p>24 necessarily. But I think I'm pretty</p> <p>25 thorough at it.</p>
26	28
<p>1 anything.</p> <p>2 Q And then finally you said you owned a</p> <p>3 one-acre vacant lot in the City of Ripon</p> <p>4 industrial park; is that right?</p> <p>5 A That's right.</p> <p>6 Q When did you buy that?</p> <p>7 A Five years ago.</p> <p>8 Q How much did you pay for it?</p> <p>9 A It was between 16 and 17 thousand. Like</p> <p>10 16,700.</p> <p>11 Q What do you think it's worth now?</p> <p>12 A I just turned down 30 last week. I told</p> <p>13 them 35 is what I'd take. So I'm not</p> <p>14 actively trying to sell it either.</p> <p>15 Q Okay. You have a lot of experience</p> <p>16 buying and selling real estate. Would</p> <p>17 you agree?</p> <p>18 A Yes.</p> <p>19 Q Is there anything else in your background</p> <p>20 that you think is relevant to this</p> <p>21 dispute?</p> <p>22 A In my background?</p> <p>23 Q In your background as a real estate</p> <p>24 enthusiast.</p> <p>25 A In all of these, I think I've done due</p>	<p>1 Q What procedures do you think licensed</p> <p>2 appraisers or professional appraisers use</p> <p>3 that you don't use?</p> <p>4 A Well, they weight things and they take --</p> <p>5 they equate this property to this</p> <p>6 property. And they say, this is only</p> <p>7 worth 70 percent of that. And I don't</p> <p>8 know all their little gimmicks and rules</p> <p>9 that they use to get that and why they're</p> <p>10 even relevant. You know, that's what</p> <p>11 they do.</p> <p>12 Maybe I do it in my head. But</p> <p>13 these little gimmicks of, like I said,</p> <p>14 weighing one against the other, and this</p> <p>15 is only worth 90 percent of that, I don't</p> <p>16 know how they come up with that. That's</p> <p>17 something that's fairly subjective on</p> <p>18 their part. But I guess that's their</p> <p>19 accepted way of doing things. I don't</p> <p>20 necessarily go along with it.</p> <p>21 Q Do you think your appraisal method is</p> <p>22 more objective than a licensed</p> <p>23 appraiser's?</p> <p>24 A Just as.</p> <p>25 Q Just as objective?</p>

<p style="text-align: right;">29</p> <p>1 A Yes. The gimmicks they're using with</p> <p>2 taking this as a percentage of that or,</p> <p>3 you know, instead of looking for</p> <p>4 identical or nearly identical pieces of</p> <p>5 property, they're taking the easy way out</p> <p>6 and then applying these factors to it</p> <p>7 that I don't think are too relevant so --</p> <p>8 MR. LEE: Okay.</p> <p>9 (Moodie Exhibit No. 1 marked for</p> <p>10 identification.)</p> <p>11 EXAMINATION</p> <p>12 BY MR. LEE:</p> <p>13 Q Showing you what's been marked Moodie</p> <p>14 Exhibit 1, take a minute to review it if</p> <p>15 you'd like. Please don't mark on it,</p> <p>16 though.</p> <p>17 A Okay.</p> <p>18 Q Do you recognize Exhibit 1?</p> <p>19 A Yes.</p> <p>20 Q Can you tell me what it is?</p> <p>21 A Notice of condemnation.</p> <p>22 Q And there's an exhibit to Exhibit 1,</p> <p>23 correct?</p> <p>24 A Correct.</p> <p>25 Q Exhibit A, correct?</p>	<p style="text-align: right;">31</p> <p>1 A That's okay.</p> <p>2 Q Now, there's no dispute, as far as you</p> <p>3 know, that all of the land, I guess,</p> <p>4 north of this northern boundary of parcel</p> <p>5 B is owned by you, correct? The land</p> <p>6 abutting parcel B to the north you own,</p> <p>7 right?</p> <p>8 A That's correct.</p> <p>9 Q There's no dispute as to that, right?</p> <p>10 A No.</p> <p>11 Q And there's no dispute that Consolidated</p> <p>12 Water Power Company is not trying to</p> <p>13 condemn or otherwise acquire any of that</p> <p>14 land, correct?</p> <p>15 A Correct.</p> <p>16 Q Okay. I'd like to refer to all the</p> <p>17 upland property as your land or the</p> <p>18 upland property. Is that okay?</p> <p>19 A That's okay.</p> <p>20 Q The point is, will you know what I'm</p> <p>21 talking about if I refer to all these</p> <p>22 things as I've just described?</p> <p>23 A Sure.</p> <p>24 Q Okay. Good. Now, you claim -- referring</p> <p>25 you back to page 4 of Exhibit 1, you</p>
<p style="text-align: right;">30</p> <p>1 A Correct.</p> <p>2 Q Do you recognize the document attached as</p> <p>3 Exhibit A?</p> <p>4 A Yes.</p> <p>5 Q Can you tell me what it is?</p> <p>6 A It's a survey of the proposed</p> <p>7 condemnation land.</p> <p>8 Q Performed by Badger-Land Surveying,</p> <p>9 correct?</p> <p>10 A Right.</p> <p>11 Q Do you recall being served with the</p> <p>12 notice of condemnation at the beginning</p> <p>13 of the lawsuit?</p> <p>14 A Yes.</p> <p>15 Q Just to talk about terminology for the</p> <p>16 purposes of the deposition, I would like</p> <p>17 to refer to this land marked parcel B,</p> <p>18 delineated as parcel B, on, I guess, page</p> <p>19 4 of Exhibit 1 as either parcel B or the</p> <p>20 Moodie parcel. Is that okay with you?</p> <p>21 A Fine.</p> <p>22 Q And then I'm going to refer to parcel A,</p> <p>23 and we're not going to have many</p> <p>24 questions on that as parcel A or the</p> <p>25 anonymous parcel. Is that okay with you?</p>	<p style="text-align: right;">32</p> <p>1 claim that you own parcel B, correct?</p> <p>2 A That's correct.</p> <p>3 Q Are there any other owners besides you?</p> <p>4 A No.</p> <p>5 Q Referring to parcel A, you do not claim</p> <p>6 to own any portion of that parcel,</p> <p>7 correct?</p> <p>8 A No.</p> <p>9 Q Do you have any idea who, if anyone,</p> <p>10 might own that parcel?</p> <p>11 A No, I don't.</p> <p>12 Q Do you believe that Consolidated Water</p> <p>13 Power Company owns it?</p> <p>14 A No.</p> <p>15 Q By the way, if I refer to Consolidated</p> <p>16 Water Power Company as CWPCo, will you</p> <p>17 know what I'm talking about?</p> <p>18 A Yes, I do.</p> <p>19 Q You are not challenging CWPCo's adverse</p> <p>20 possession of parcel A?</p> <p>21 A No, I'm not.</p> <p>22 Q You're not challenging CWPCo's right to</p> <p>23 take parcel A under the Federal Power</p> <p>24 Act, correct? You're not challenging</p> <p>25 that?</p>

<p style="text-align: right;">33</p> <p>1 A I'm not challenging it, and I'm not</p> <p>2 condoning it.</p> <p>3 Q Okay. Now, when you acquired parcel B</p> <p>4 you acquired it by deed, correct?</p> <p>5 A Correct.</p> <p>6 Q Warranty deed?</p> <p>7 A Correct.</p> <p>8 Q And did you -- strike that. You acquired</p> <p>9 all of parcel B in one transaction,</p> <p>10 correct?</p> <p>11 A Along with the balance of the 2.9 acres</p> <p>12 in that parcel, right.</p> <p>13 Q Right. The point being is that you</p> <p>14 didn't -- you didn't acquire, like, half</p> <p>15 of parcel B with one purchase and the</p> <p>16 other half in another purchase, right?</p> <p>17 A That's correct.</p> <p>18 Q Do you have an opinion on the total</p> <p>19 acreage of parcel B?</p> <p>20 A No.</p> <p>21 Q CWPCo and its surveyors have estimated</p> <p>22 parcel B to be approximately 0.41 acres</p> <p>23 in size. Do you have any reason to</p> <p>24 dispute that?</p> <p>25 A No.</p>	<p style="text-align: right;">35</p> <p>1 A Yes.</p> <p>2 Q Did you create Exhibit 2?</p> <p>3 A Yes.</p> <p>4 Q Can you tell me what it is?</p> <p>5 A It's a drawing -- not a survey, but a</p> <p>6 drawing -- pretty accurately, of the five</p> <p>7 different parcels that I assembled on the</p> <p>8 Wisconsin River downtown Stevens Point.</p> <p>9 Q Okay. Can you point out, without marking</p> <p>10 on Exhibit 2, approximately where the</p> <p>11 freight terminal building is located?</p> <p>12 A It's on the first parcel that I acquired</p> <p>13 on the map -- on my drawing. It's</p> <p>14 labeled number 1.</p> <p>15 Q Is it down near the river? Is it up</p> <p>16 towards the street?</p> <p>17 A It's in this area right here</p> <p>18 (indicating).</p> <p>19 MR. LEE: So let the record</p> <p>20 reflect that Mr. Moodie just indicated an</p> <p>21 area right around where the number</p> <p>22 8-14-98 is located.</p> <p>23 EXAMINATION</p> <p>24 BY MR. LEE:</p> <p>25 Q Did I describe that accurately?</p>
<p style="text-align: right;">34</p> <p>1 Q Now, there are no buildings located on</p> <p>2 parcel B, correct?</p> <p>3 A Correct.</p> <p>4 Q There are buildings located on your</p> <p>5 upland property, though, correct?</p> <p>6 A Correct.</p> <p>7 Q How many buildings are there?</p> <p>8 A Two.</p> <p>9 Q Can you describe one of them and</p> <p>10 approximately where they sit on the</p> <p>11 upland property?</p> <p>12 A There's a freight terminal building</p> <p>13 that's two sections. One of the sections</p> <p>14 is 36 by 62. The other section is about</p> <p>15 40 by 42. It's on the parcel of land</p> <p>16 that I acquired with parcel B.</p> <p>17 (Moodie Exhibit No. 2 marked for</p> <p>18 identification.)</p> <p>19 EXAMINATION</p> <p>20 BY MR. LEE:</p> <p>21 Q Showing you what's been marked Moodie</p> <p>22 Exhibit 2, you can take a minute to</p> <p>23 review that if you'd like.</p> <p>24 A Okay.</p> <p>25 Q Have you seen Exhibit 2 before?</p>	<p style="text-align: right;">36</p> <p>1 A It's close enough.</p> <p>2 Q That's where the freight building is</p> <p>3 located. You said there was another</p> <p>4 building on the property, correct?</p> <p>5 A Correct.</p> <p>6 Q And where is that located?</p> <p>7 A It's on the drawing labeled parcel number</p> <p>8 5.</p> <p>9 Q And can you point out again where on the</p> <p>10 drawing that would be located?</p> <p>11 A Right here (indicating).</p> <p>12 MR. LEE: Let the record reflect</p> <p>13 Mr. Moodie just indicated the narrow</p> <p>14 shaded area up near West Clark Street.</p> <p>15 EXAMINATION</p> <p>16 BY MR. LEE:</p> <p>17 Q Is that correct?</p> <p>18 A Correct. The address is 165 West Clark,</p> <p>19 of the building.</p> <p>20 Q Does the freight terminal building have</p> <p>21 an address?</p> <p>22 A It did, I think, originally. And it was,</p> <p>23 I think, maybe 133 West Clark.</p> <p>24 Q Okay. And you said this is in downtown</p> <p>25 Stevens Point?</p>

<p style="text-align: right;">37</p> <p>1 A Yeah. I guess that's open for</p> <p>2 interpretation, too.</p> <p>3 Q How many -- how many acres in total do</p> <p>4 you own on West Clark Street?</p> <p>5 A 5.083 is what I believe the survey shows.</p> <p>6 Q I want to quickly walk through each of</p> <p>7 the parcels, their purchase dates and</p> <p>8 purchase prices, just so that I know I</p> <p>9 have the accurate information. Okay?</p> <p>10 I'll start with what's marked on</p> <p>11 Exhibit 2 as parcel number 1. It states</p> <p>12 that you acquired it on August 14, 1998,</p> <p>13 correct?</p> <p>14 A Correct.</p> <p>15 Q And is that the correct date?</p> <p>16 A I believe it is.</p> <p>17 Q And you purchased -- the purchase price</p> <p>18 for lot number 1 was \$80,500.00, correct?</p> <p>19 A Correct.</p> <p>20 Q Moving on to parcel number 2, Exhibit 2</p> <p>21 notes that you acquired it March 26,</p> <p>22 1999, correct?</p> <p>23 A Correct.</p> <p>24 Q And as far as you know, is that an</p> <p>25 accurate date?</p>	<p style="text-align: right;">39</p> <p>1 A Quitclaim deed.</p> <p>2 Q Quitclaim deed?</p> <p>3 A From the railroad -- from -- I bought it</p> <p>4 from the railroad, but it was handled by</p> <p>5 some firm they used in Chicago.</p> <p>6 Q Would the quitclaim deed have the sale</p> <p>7 price on there?</p> <p>8 A It should have, I would guess.</p> <p>9 Q Okay. Any reason to think that, assuming</p> <p>10 that's the case, that that sale price is</p> <p>11 inaccurate?</p> <p>12 A It's very close. It's 7,300 or 7,500 or</p> <p>13 in there somewhere.</p> <p>14 Q Well, let me put it this way. I'm not</p> <p>15 trying to -- this isn't a point of</p> <p>16 disagreement. I just want to make sure</p> <p>17 that the amount -- assuming the amount is</p> <p>18 listed on the quitclaim deed, is it fair</p> <p>19 to say that that's how much you paid for</p> <p>20 lot number 3?</p> <p>21 A I would hope so.</p> <p>22 Q That's fine.</p> <p>23 A I've got canceled checks, too, that I can</p> <p>24 get back to.</p> <p>25 Q That's fine. If that becomes necessary</p>
<p style="text-align: right;">38</p> <p>1 A Correct.</p> <p>2 Q And the purchase price for lot number 2</p> <p>3 was \$80,000.00 even, correct?</p> <p>4 A Correct.</p> <p>5 Q Moving on to lot number 3, Exhibit 2</p> <p>6 indicates that you acquired it on August</p> <p>7 20, 1999, correct?</p> <p>8 A Correct.</p> <p>9 Q Is there any reason to think that the</p> <p>10 actual purchase date was some time in</p> <p>11 October of 1999, to your recollection?</p> <p>12 A I -- I can't say one way or another.</p> <p>13 I -- I thought this was correct. But --</p> <p>14 Q Okay.</p> <p>15 A I'd have to check that.</p> <p>16 Q For these purposes that's fine. And the</p> <p>17 purchase price of lot number 3 was</p> <p>18 \$7,300.00, correct?</p> <p>19 A I'm not exactly sure on that either. It</p> <p>20 was in that range. Might have been</p> <p>21 7,500. I can't remember for sure on that</p> <p>22 right now.</p> <p>23 Q Is there a -- how is the purchase</p> <p>24 documented? Strike that. How did you</p> <p>25 acquire the property, lot number 3?</p>	<p style="text-align: right;">40</p> <p>1 I'll ask you about it.</p> <p>2 A Okay.</p> <p>3 Q Moving on to lot number 4 on Exhibit 2,</p> <p>4 Exhibit 2 states that you acquired it on</p> <p>5 February 22, 2000. Is that correct?</p> <p>6 A That's correct.</p> <p>7 Q And as far as you know, that is, in fact,</p> <p>8 the date you acquired lot number 4?</p> <p>9 A As far as I know.</p> <p>10 Q The purchase price was \$47,700.00,</p> <p>11 correct, for lot number 4?</p> <p>12 A I think that's correct.</p> <p>13 Q I see lot number 4 abuts West Clark</p> <p>14 Street directly. Are there any buildings</p> <p>15 on lot number 4?</p> <p>16 A Not anymore.</p> <p>17 Q Moving on to lot number 5, Exhibit 2</p> <p>18 states that you purchased lot number 5 on</p> <p>19 December 21, 2001, correct?</p> <p>20 A Correct.</p> <p>21 Q As far as you know, is that the date of</p> <p>22 the purchase?</p> <p>23 A Right.</p> <p>24 Q And the purchase price for lot number 5</p> <p>25 was \$100,000.00, correct?</p>

41	43
<p>1 A Correct.</p> <p>2 Q So in total you made five purchases over</p> <p>3 approximately 40 months?</p> <p>4 A Correct.</p> <p>5 Q And in total you spent approximately</p> <p>6 \$315,000.00 on those five parcels, right?</p> <p>7 A Approximately, right.</p> <p>8 Q Now, other than -- I'm going to pull</p> <p>9 Exhibit 1 in front of you. Other than</p> <p>10 parcel B on page 4 of Exhibit 1, you</p> <p>11 understand that CWPCo's position is that</p> <p>12 none of this other land that you claim</p> <p>13 ownership to is necessary to the</p> <p>14 operation of the Stevens Point Hydropower</p> <p>15 Project. Do you understand that to be</p> <p>16 their position?</p> <p>17 A It may be their position.</p> <p>18 Q Do you understand that to be their</p> <p>19 position?</p> <p>20 A At this point, yes.</p> <p>21 Q Okay. Do you agree?</p> <p>22 A Do I agree --</p> <p>23 Q Do you agree that, looking at Exhibit 2,</p> <p>24 lots 2, 3, 4 or 5 are not necessary to</p> <p>25 the operation of the Stevens Point</p>	<p>1 of land to satisfy their requirements of</p> <p>2 FERC to provide public access. They may</p> <p>3 need that. I don't know.</p> <p>4 Q Just to be clear, they have never told</p> <p>5 you they need your land other than parcel</p> <p>6 B?</p> <p>7 A They've told me they need all the other</p> <p>8 land they ever had, even the land they</p> <p>9 sold.</p> <p>10 Q Just not the upland property?</p> <p>11 A Uh-huh.</p> <p>12 Q Yes? They've never represented to you</p> <p>13 that they have needed anything that you</p> <p>14 own other than parcel B?</p> <p>15 A Right.</p> <p>16 Q Okay. What do you currently use the</p> <p>17 upland property for?</p> <p>18 A I have a few things stored in the</p> <p>19 buildings. But I'm not -- you know, I</p> <p>20 don't need to be using it at all. It's</p> <p>21 just there so I do use it.</p> <p>22 Q Does Moodie, Incorporated make any use of</p> <p>23 the upland property?</p> <p>24 A No.</p> <p>25 Q The stuff you store in the buildings, is</p>
42	44
<p>1 Hydropower Project?</p> <p>2 A No. I won't make that assumption, no.</p> <p>3 Q So you don't agree?</p> <p>4 A I don't have an opinion right now one way</p> <p>5 or the other.</p> <p>6 Q What do you mean by that?</p> <p>7 A In dealing with CWPCo, they have always</p> <p>8 stated that they need lots of land to</p> <p>9 satisfy the need to provide access and</p> <p>10 recreation, whatever, to the public. And</p> <p>11 they may need that. I don't know.</p> <p>12 Q They may need your upland property to</p> <p>13 accomplish that stated goal, correct?</p> <p>14 A Right. Well, it's the requirement by</p> <p>15 FERC, as I understand, that they provide</p> <p>16 land for the public.</p> <p>17 Q All right. Are there any specific</p> <p>18 reasons that they would need your upland</p> <p>19 property -- and by that, I'm referring to</p> <p>20 everything you own except parcel B -- to</p> <p>21 accomplish that purpose? Is there any</p> <p>22 specific reason why you think that would</p> <p>23 be the case?</p> <p>24 A That's what they've always told me</p> <p>25 throughout the years, that they need lots</p>	<p>1 it your personal items?</p> <p>2 A Yes. And a friend of mine stores a few</p> <p>3 things there, too.</p> <p>4 Q Do you ever use the property for</p> <p>5 recreation?</p> <p>6 A No.</p> <p>7 Q Have you ever leased any portion of the</p> <p>8 upland property?</p> <p>9 A I've rented out some space in the freight</p> <p>10 terminal right now.</p> <p>11 Q Storage space?</p> <p>12 A Storage space, yes.</p> <p>13 Q Who do you rent it out to?</p> <p>14 A You want the name or --</p> <p>15 Q Sure.</p> <p>16 A Mark Sprede. He's a contractor. He just</p> <p>17 stores some building materials or tools</p> <p>18 there, some things.</p> <p>19 Q How much do you charge him?</p> <p>20 A He's paying \$50.00 a month.</p> <p>21 Q Do you lease any portion of the property</p> <p>22 to anybody other than Mr. Sprede?</p> <p>23 A No.</p> <p>24 Q Have you ever?</p> <p>25 A No. Well, he works with somebody -- a</p>

45	47
<p>1 company called Precision Glass. And the</p> <p>2 two of them together have used it. I</p> <p>3 don't know. It's the same -- you know,</p> <p>4 they're in the glass business.</p> <p>5 Mr. Sprede puts in windows, commercial</p> <p>6 windows in hospitals and things.</p> <p>7 Q But the only thing you have ever leased</p> <p>8 to him is storage space in the freight</p> <p>9 building, right?</p> <p>10 A Right. Well, there was a building on</p> <p>11 number 2 which is gone now. They were</p> <p>12 using that, and now they moved the stuff</p> <p>13 to the freight --</p> <p>14 Q Okay. Okay. Can you show me on Exhibit</p> <p>15 2 where the building that used to be on</p> <p>16 lot number 2 was located?</p> <p>17 A It was right behind the parcel 4.</p> <p>18 Q Okay.</p> <p>19 A Right here (indicating).</p> <p>20 Q And what was there? Like a house?</p> <p>21 A No. It was a metal building.</p> <p>22 Q Did it have a foundation?</p> <p>23 A Yeah. Well, no. It had a slab.</p> <p>24 Q Okay.</p> <p>25 A It's a steel building sitting on a slab.</p>	<p>1 property?</p> <p>2 A No.</p> <p>3 Q Can you show me where on Exhibit 2 the</p> <p>4 underground storage tank was located?</p> <p>5 A It was probably about right there</p> <p>6 (indicating).</p> <p>7 Q Right about the D on acquired in lot 2?</p> <p>8 A Right.</p> <p>9 Q Did you sue the seller?</p> <p>10 A No.</p> <p>11 Q Did you get the seller to help you pay</p> <p>12 for it?</p> <p>13 A No.</p> <p>14 Q Did anyone help you pay for it?</p> <p>15 A It qualified for the PEPFA clean-up fund</p> <p>16 because it was used to dispense gasoline.</p> <p>17 Q Did you have to pay any money out of your</p> <p>18 pocket?</p> <p>19 A 7,500.</p> <p>20 Q That's in total for the remediation</p> <p>21 efforts?</p> <p>22 A Right.</p> <p>23 Q What did you have to pay for</p> <p>24 specifically?</p> <p>25 A I think that was the -- I think the total</p>
46	48
<p>1 Q Is the slab still there?</p> <p>2 A Slab is still there.</p> <p>3 Q When did you demolish that?</p> <p>4 A I started last -- late last fall.</p> <p>5 Q It's gone now completely?</p> <p>6 A It's gone now, yeah.</p> <p>7 Q So you never leased any of the vacant</p> <p>8 land on the upland property to anybody?</p> <p>9 A No.</p> <p>10 Q You undertook remediation efforts on the</p> <p>11 upland property after you purchased it,</p> <p>12 right?</p> <p>13 A Right.</p> <p>14 Q Can you describe what you did?</p> <p>15 A I discovered an underground storage tank.</p> <p>16 I think it was 500 gallons. Determined</p> <p>17 it was used for gasoline and had once had</p> <p>18 a dispenser on it. And I had the fire</p> <p>19 department come. We dug it up and had an</p> <p>20 engineering company work with me to test</p> <p>21 all the soil, clean it up. We ended up</p> <p>22 hauling contaminated soil out and got</p> <p>23 closure from the DNR.</p> <p>24 Q Did you know that the underground storage</p> <p>25 tank was there when you bought the</p>	<p>1 cost must have been 50 or 60 thousand.</p> <p>2 But the way I understood it at the time</p> <p>3 that I had to pay the first 7,500, and</p> <p>4 PEPFA paid the rest, is the way I</p> <p>5 understand it.</p> <p>6 Q Did you have to do any other remediation</p> <p>7 work on any portion of the upland</p> <p>8 property?</p> <p>9 A No. That was all done before I bought</p> <p>10 it. And there was some gravel in this</p> <p>11 area that I think had some diesel fuel or</p> <p>12 something in it. But that was closed</p> <p>13 before I bought it so --</p> <p>14 Q And for the record, you just referred to</p> <p>15 an area on lot number 1 between the</p> <p>16 number 1 as indicated on the drawing and</p> <p>17 the border with lot number 2, correct?</p> <p>18 A Right. As far as I understand, that's</p> <p>19 the way it was, yeah.</p> <p>20 Q But after you -- at the time you</p> <p>21 purchased it, the gravel was gone and the</p> <p>22 diesel fuel was cleaned up?</p> <p>23 A And I had closure from the DNR before I</p> <p>24 bought it.</p> <p>25 Q Okay.</p>

49	51
<p>1 A The seller provided it.</p> <p>2 Q What other changes did you make to the</p> <p>3 upland property after you purchased it?</p> <p>4 A Shortly after I bought the first couple</p> <p>5 parcels, Clark Street, which is Highway</p> <p>6 10 at the time, was redone, and the</p> <p>7 bridge was rebuilt crossing the river.</p> <p>8 And while they had the road tore up, I</p> <p>9 requested that they put in oversized</p> <p>10 water mains and sewer lateral into the</p> <p>11 property so if we put condominiums or</p> <p>12 some other development in there we had</p> <p>13 services already into the property. And</p> <p>14 I think that was, like, \$5,000.00,</p> <p>15 something like that.</p> <p>16 Q \$5,000.00 for sewer and water lines?</p> <p>17 A Yeah. The lateral -- the oversized</p> <p>18 laterals. Now, where the lots previously</p> <p>19 existed, they -- they replaced those with</p> <p>20 a standard --</p> <p>21 Q Just don't mark on it.</p> <p>22 A I'm sorry.</p> <p>23 Q That's okay.</p> <p>24 A -- with a standard three-quarter-inch</p> <p>25 copper and four-inch sewer lateral. So</p>	<p>1 wondering what you use it for.</p> <p>2 A I'm not using it for anything right now.</p> <p>3 It's part of the property. This -- all</p> <p>4 this land is -- is an investment. That's</p> <p>5 what it is. It's an investment. That's</p> <p>6 what I use it for.</p> <p>7 Q Okay. So you don't, like, fish off the</p> <p>8 dike?</p> <p>9 A I don't fish.</p> <p>10 Q You don't put canoes in off the dike?</p> <p>11 A I don't do any boating. I don't have</p> <p>12 time.</p> <p>13 Q Have you used the property for</p> <p>14 anything -- I'm sorry. Have you used</p> <p>15 parcel B for anything since you bought</p> <p>16 it?</p> <p>17 A No. It's just an investment.</p> <p>18 Q What actions -- now, obviously, there is</p> <p>19 a -- an earthen dike and a drainage ditch</p> <p>20 on parcel B, correct?</p> <p>21 A Correct.</p> <p>22 Q What actions have you taken to maintain</p> <p>23 the integrity of the dike and the ditch?</p> <p>24 A I reinforced the water side of the dike</p> <p>25 with riprap that was out into the river.</p>
50	52
<p>1 those were replaced at no cost because</p> <p>2 they were standard. But the oversized I</p> <p>3 had to pay for, and the sewer drains to</p> <p>4 the west. So the lowest point that I</p> <p>5 could hook onto was here (indicating)</p> <p>6 where the number 14 is.</p> <p>7 Q Okay.</p> <p>8 A So that's where the oversized sewer and</p> <p>9 water laterals are.</p> <p>10 Q Since you just referenced that area of</p> <p>11 the drawing, what is this kind of</p> <p>12 rectangular-shaped lot, I guess, for lack</p> <p>13 of a better word, with 59 -- it's labeled</p> <p>14 as having 59 feet of street frontage?</p> <p>15 A There's a house there.</p> <p>16 Q Is it occupied?</p> <p>17 A Yes.</p> <p>18 Q Referring to parcel B on Exhibit -- page</p> <p>19 4 of Exhibit 1, what do you use parcel B</p> <p>20 for?</p> <p>21 A River access.</p> <p>22 Q And what do you mean by river access?</p> <p>23 Just with a boat?</p> <p>24 A No. Water frontage is nice to have.</p> <p>25 Q Well, I certainly agree. I'm just</p>	<p>1 I brought it back up and built up the</p> <p>2 riprap.</p> <p>3 Q And you contend that you did that over</p> <p>4 the course of a couple of days in August</p> <p>5 of 2008?</p> <p>6 A Correct.</p> <p>7 Q And just to be clear, the water had been</p> <p>8 drawn down, and you used the opportunity</p> <p>9 to take stones from the river bed and put</p> <p>10 them on the embankment, correct?</p> <p>11 A Against the embankment.</p> <p>12 Q Against the embankment?</p> <p>13 A Correct.</p> <p>14 Q And this is the only time that you ever</p> <p>15 did that work, right?</p> <p>16 A Correct.</p> <p>17 Q How many rocks do you think you moved?</p> <p>18 A I hate to guess.</p> <p>19 Q Ten?</p> <p>20 A Ten? No.</p> <p>21 Q More?</p> <p>22 A Oh, I bet you a thousand.</p> <p>23 Q 1,000?</p> <p>24 A Probably. It's 300 feet.</p> <p>25 Q So on this occasion in August of 2008,</p>

53	55
<p>1 you moved -- you reinforced the riprap on</p> <p>2 the earthen embankment all up and down</p> <p>3 parcel B, correct?</p> <p>4 A Correct. I didn't count how many rocks I</p> <p>5 moved.</p> <p>6 Q That's fine. You can just give me an</p> <p>7 estimate.</p> <p>8 A Well, you can see by the pictures how</p> <p>9 many rocks I moved.</p> <p>10 Q Since you bought parcel B, did you ever</p> <p>11 clear vegetation from it?</p> <p>12 A No.</p> <p>13 Q Did you ever spread gravel or granite or</p> <p>14 other stones on the trail?</p> <p>15 A I did not, no.</p> <p>16 Q Did you ever monitor the dike or ditch</p> <p>17 for stability?</p> <p>18 A I've walked it and looked for seepage and</p> <p>19 things, yes.</p> <p>20 Q Did you ever find any seepage?</p> <p>21 A No.</p> <p>22 Q Did you ever find any erosion?</p> <p>23 A No. Well, when I put the rocks against</p> <p>24 the earth I did find holes on the other</p> <p>25 side. And I did plug those with rocks,</p>	<p>1 condominium complex on the upland</p> <p>2 property, right?</p> <p>3 A Me personally build it? Not necessarily.</p> <p>4 Q I'm not thinking you're out there with</p> <p>5 bricks and mortar, but I'm thinking you</p> <p>6 would have contracted with a developer to</p> <p>7 build a condominium complex, right?</p> <p>8 A Not necessarily.</p> <p>9 Q What were your development intentions?</p> <p>10 A To either do it myself or sell it to</p> <p>11 somebody that wanted to do it.</p> <p>12 Q So you never had a set plan for what you</p> <p>13 thought was going to be built on the</p> <p>14 upland property, correct?</p> <p>15 A I knew it was a wonderful place for</p> <p>16 condominiums because of what was</p> <p>17 happening in other cities at the time.</p> <p>18 Condominium complexes in the downtown</p> <p>19 area where you are within walking</p> <p>20 distance and all kinds of stores and</p> <p>21 things, that was popular in the early</p> <p>22 2000s and even beyond that so --</p> <p>23 Q Is it popular anymore?</p> <p>24 A Pardon me?</p> <p>25 Q Is it popular anymore?</p>
54	56
<p>1 too.</p> <p>2 Q On the other side -- sorry.</p> <p>3 A On the upland side of the dike.</p> <p>4 Q Meaning on the slope leading down into</p> <p>5 the ditch, correct?</p> <p>6 A Right.</p> <p>7 Q When you say holes, what kind of holes</p> <p>8 did you find?</p> <p>9 A I don't know. Two-, three-, four-inch</p> <p>10 holes. I just dropped rocks in it. They</p> <p>11 might have been animal holes or</p> <p>12 something. But there wasn't that many.</p> <p>13 Q How many times did you do that, drop</p> <p>14 rocks into holes?</p> <p>15 A I did it one time. And I'm not sure how</p> <p>16 many holes I did. Probably five, six</p> <p>17 holes, something like that.</p> <p>18 Q You intend to develop the upland</p> <p>19 property, correct?</p> <p>20 A Not necessarily.</p> <p>21 Q What do you mean by that?</p> <p>22 A I'm -- it was a speculation. If anybody</p> <p>23 else wants to develop, I'd be more than</p> <p>24 willing to sell it.</p> <p>25 Q At one time your intention was to build a</p>	<p>1 A I don't think so.</p> <p>2 Q Are condos popular anymore?</p> <p>3 A I don't know. In 2007, as you know, I</p> <p>4 contracted with someone to promote it</p> <p>5 because I could see the end coming. And</p> <p>6 I thought we'd try and get somebody else</p> <p>7 in there that could move faster than me.</p> <p>8 Q That's J.L. Fischer, Inc.?</p> <p>9 A Yeah.</p> <p>10 Q You engaged J.L. Fischer, Inc. to find a</p> <p>11 developer to help you develop your land,</p> <p>12 right?</p> <p>13 A No. To find somebody that would buy the</p> <p>14 property and develop it themselves was</p> <p>15 what I was primarily interested in.</p> <p>16 Q So is J.L. Fischer, Inc. a broker of</p> <p>17 commercial real estate?</p> <p>18 A He had a lot of connections with</p> <p>19 developers.</p> <p>20 Q So would he have -- would J.L. Fischer,</p> <p>21 Inc. have acted as broker for the</p> <p>22 property?</p> <p>23 A I suppose you could call him that, yeah.</p> <p>24 Q What would you call him? Doesn't matter</p> <p>25 what I would call him.</p>

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<p>1 A I don't know how you define a broker, I</p> <p>2 guess, is what I don't want to commit to.</p> <p>3 You know, is that somebody that works on</p> <p>4 percentage? What's a broker?</p> <p>5 Q Fair enough. What exactly did you want</p> <p>6 J.L. Fischer, Inc. to do with respect to</p> <p>7 the property?</p> <p>8 A For a set fee he was going to promote it</p> <p>9 to up to 30 people that had done projects</p> <p>10 in Illinois and Wisconsin. And it may</p> <p>11 have worked. It may not have worked, you</p> <p>12 know, so -- but I had to stop him from --</p> <p>13 Q Would he -- would he have negotiated the</p> <p>14 sale, or would you have done that</p> <p>15 directly?</p> <p>16 A He would have brought me interested</p> <p>17 parties, and we would have worked</p> <p>18 together.</p> <p>19 Q So J.L. Fischer, Inc. was retained to</p> <p>20 market the property, correct?</p> <p>21 A Correct.</p> <p>22 Q And basically act as deal maker, correct?</p> <p>23 A Correct, I suppose, yeah.</p> <p>24 Q Yeah. But then -- but he was -- strike</p> <p>25 that. J.L. Fischer, Inc. was to receive</p>	<p>1 A Not as a part of that. I paid him</p> <p>2 \$250.00 for a meeting that he set up one</p> <p>3 time.</p> <p>4 Q Related -- was the meeting related to the</p> <p>5 property?</p> <p>6 A Indirectly, yeah.</p> <p>7 Q Can you just describe what --</p> <p>8 A It was with a law firm.</p> <p>9 Q Okay.</p> <p>10 A Discussing this --</p> <p>11 Q This dispute?</p> <p>12 A This situation, right.</p> <p>13 Q And you never signed a contract to</p> <p>14 develop the land, correct?</p> <p>15 A To develop it, no.</p> <p>16 (Moodie Exhibit No. 3 marked for</p> <p>17 identification.)</p> <p>18 EXAMINATION</p> <p>19 BY MR. LEE:</p> <p>20 Q Showing you what's been marked Moodie</p> <p>21 Exhibit 3, take a moment to examine it,</p> <p>22 if you like.</p> <p>23 A Okay.</p> <p>24 Q Do you recognize this document?</p> <p>25 A Yes.</p>
58	60
<p>1 a fixed fee regardless of whether the</p> <p>2 sale -- a sale occurred?</p> <p>3 A Correct.</p> <p>4 Q Was J.L. Fischer then to act as your</p> <p>5 agent in negotiations?</p> <p>6 A No.</p> <p>7 Q You would have handled that directly,</p> <p>8 right?</p> <p>9 A Right.</p> <p>10 Q Okay. Did J.L. Fischer, Inc. locate any</p> <p>11 interested developers?</p> <p>12 A I stopped him before he could get going.</p> <p>13 Q How long did he work to do that? He,</p> <p>14 meaning J.L. Fischer, Inc.</p> <p>15 A He didn't work at all because I just</p> <p>16 returned a contract to him when I</p> <p>17 received the letter from CWPCo telling me</p> <p>18 that they would oppose any sale or</p> <p>19 development of my property. So at that</p> <p>20 point I didn't know what I had to sell.</p> <p>21 And I couldn't -- how could I promote the</p> <p>22 land when I didn't know what I was</p> <p>23 selling. Nobody was knowing what they</p> <p>24 were buying so --</p> <p>25 Q Did you pay J.L. Fischer, Inc. anything?</p>	<p>1 Q Can you tell me what it is?</p> <p>2 A It's a permit from the DNR to fill the</p> <p>3 property, bring it out of the flood</p> <p>4 plain.</p> <p>5 Q You say it's a permit. To me it just</p> <p>6 looks like a cover letter to a permit; is</p> <p>7 that correct?</p> <p>8 A Yes.</p> <p>9 Q Okay. I'll represent to you that I took</p> <p>10 this page out of your summary judgment --</p> <p>11 Okay.</p> <p>12 Q -- exhibits.</p> <p>13 A Okay.</p> <p>14 Q Do you recall including this with your</p> <p>15 summary judgment exhibits?</p> <p>16 A Yes.</p> <p>17 Q Now, your application to the DNR --</p> <p>18 strike that. What specifically were you</p> <p>19 asking the DNR for permission to do?</p> <p>20 A To bring the property out of the flood</p> <p>21 plain.</p> <p>22 Q And by the property, you're referring</p> <p>23 just to the upland property, correct?</p> <p>24 A Right.</p> <p>25 Q What do you mean by bring the property</p>

61	63
<p>1 out of the flood plain?</p> <p>2 A Well, the property -- parts of the</p> <p>3 property was classified as being in the</p> <p>4 hundred-year flood plain. And the DNR</p> <p>5 granted me permission to bring enough</p> <p>6 fill in there that it would not be in the</p> <p>7 flood plain anymore.</p> <p>8 Q In other words, you're going to raise the</p> <p>9 level of the ground, correct?</p> <p>10 A I have permission to, yes.</p> <p>11 Q Have you done that?</p> <p>12 A No.</p> <p>13 Q And the DNR issued you a permit to</p> <p>14 perform that work?</p> <p>15 A Right.</p> <p>16 Q The permit the DNR issued you did not</p> <p>17 grant you the right to grade any portion</p> <p>18 of parcel B, correct?</p> <p>19 A Right. We didn't ask to.</p> <p>20 Q Okay. And as we sit here today, that's</p> <p>21 not part of the grading project?</p> <p>22 A No.</p> <p>23 Q Correct?</p> <p>24 A No.</p> <p>25 Q Getting back to Exhibit 3, looking at the</p>	<p>1 Q This meaning the lawsuit?</p> <p>2 A Right.</p> <p>3 Q Switching gears a little bit, you stated</p> <p>4 in your summary judgment brief that the</p> <p>5 City of Stevens Point is, and I'm</p> <p>6 quoting, eager to rezone, end quote, the</p> <p>7 upland property, including parcel B.</p> <p>8 A Right.</p> <p>9 Q Do you recall saying that?</p> <p>10 A Yes.</p> <p>11 Q What do you mean by that, that they're</p> <p>12 eager to rezone?</p> <p>13 A Well, we had at the time a community</p> <p>14 development person, whatever the title</p> <p>15 was. Name was John Gardner. And they</p> <p>16 were eager, as any city is, to get</p> <p>17 properties cleaned up and, you know,</p> <p>18 buildings on to raise their tax base.</p> <p>19 Q What time frame are we talking about</p> <p>20 here?</p> <p>21 A For what? When did he say that?</p> <p>22 Q Yes.</p> <p>23 A He's been gone probably two years. So it</p> <p>24 was ever since I brought it up till two</p> <p>25 years ago or whenever he left. I haven't</p>
62	64
<p>1 second full paragraph --</p> <p>2 A Okay.</p> <p>3 Q -- I'm attaching a copy of your permit</p> <p>4 which lists the conditions which must be</p> <p>5 followed. A copy of the permit must be</p> <p>6 posted for reference at the project site.</p> <p>7 Please read your permit conditions</p> <p>8 carefully so that you are fully aware of</p> <p>9 what is expected of you.</p> <p>10 A Right.</p> <p>11 Q I read that correctly?</p> <p>12 A Right.</p> <p>13 Q What conditions were included in the</p> <p>14 permit?</p> <p>15 A I have to put the erosion fence, the silt</p> <p>16 fence, around the perimeter. You have to</p> <p>17 inspect it once a week or something like</p> <p>18 that, make sure the fence isn't breached,</p> <p>19 those kinds of conditions.</p> <p>20 Q Are there any conditions in the permit</p> <p>21 with respect to parcel B?</p> <p>22 A No.</p> <p>23 Q Do you intend to start the fill work any</p> <p>24 time soon?</p> <p>25 A Not until this is resolved.</p>	<p>1 talked to his replacement. I'm not even</p> <p>2 sure they have one anymore.</p> <p>3 Q The property is zoned industrial,</p> <p>4 correct?</p> <p>5 A Correct.</p> <p>6 Q And what do you think the City wants to</p> <p>7 rezone it as?</p> <p>8 A Well, they would love to have</p> <p>9 condominiums there or businesses, you</p> <p>10 know, office-type businesses. You know,</p> <p>11 it could be a nursing home. It could be</p> <p>12 condominiums or, you know, lawyers</p> <p>13 offices.</p> <p>14 Q God forbid, right?</p> <p>15 A Huh?</p> <p>16 Q God forbid, right?</p> <p>17 A Well, as long as the courthouse is</p> <p>18 uptown, you know, it's a good spot. That</p> <p>19 might be changing, too. They're talking</p> <p>20 about building a new courthouse so --</p> <p>21 Q Well, have you ever applied for a</p> <p>22 rezoning permit?</p> <p>23 A No.</p> <p>24 Q Has anyone?</p> <p>25 A No.</p>

<p style="text-align: right;">65</p> <p>1 Q For the this property, I mean.</p> <p>2 A No.</p> <p>3 Q Other than what we've talked about</p> <p>4 just --</p> <p>5 A I don't want to commit to any zoning</p> <p>6 until I know, you know, what the future</p> <p>7 buyer wants to do with it.</p> <p>8 Q Understandable.</p> <p>9 A Yeah.</p> <p>10 Q Is there anything else about your past,</p> <p>11 present or future use of the property,</p> <p>12 including parcel B, that you think is</p> <p>13 relevant to the issues in this lawsuit?</p> <p>14 I'm specifically discussing your use of</p> <p>15 the property.</p> <p>16 A I'm not sure I understand the question.</p> <p>17 Q Sure. I mean, we've talked about --</p> <p>18 we've talked about the condition the</p> <p>19 property was in when you bought it, all</p> <p>20 the steps you took to clean it up and</p> <p>21 make it presentable for developers.</p> <p>22 We've talked about the stones you placed</p> <p>23 against the embankment down by the river.</p> <p>24 And we've talked about your intentions to</p> <p>25 raise the upland property out of the</p>	<p style="text-align: right;">67</p> <p>1 think is relevant?</p> <p>2 A I can't think of anything right now.</p> <p>3 MR. LEE: Okay. Why don't we</p> <p>4 take a break for five minutes?</p> <p>5 THE WITNESS: Sure.</p> <p>6 (At this time, a brief recess</p> <p>7 was taken.)</p> <p>8 EXAMINATION</p> <p>9 BY MR. LEE:</p> <p>10 Q Setting aside the issue of adverse</p> <p>11 possession, okay, do you understand that</p> <p>12 the purpose of this legal proceeding is</p> <p>13 to determine the amount of just</p> <p>14 compensation that you will be awarded for</p> <p>15 CWPCo's taking of parcel B?</p> <p>16 A Correct.</p> <p>17 Q And do you understand that the award that</p> <p>18 you're going to get is referred to as</p> <p>19 just compensation?</p> <p>20 A Right.</p> <p>21 Q What do you think you should receive in</p> <p>22 just compensation for parcel B?</p> <p>23 A I have no idea. And I don't think I need</p> <p>24 to come up with an answer. I think CWPCo</p> <p>25 should buy the whole thing and sell what</p>
<p style="text-align: right;">66</p> <p>1 flood zone, right?</p> <p>2 A Right.</p> <p>3 Q Is there anything -- and we've talked</p> <p>4 about some other issues, too. But is</p> <p>5 there anything that we haven't talked</p> <p>6 about that you think is relevant that you</p> <p>7 intend to present evidence on at trial</p> <p>8 related to your use of any portion of the</p> <p>9 land you own?</p> <p>10 A The exclusive use of the water frontage</p> <p>11 to any project, I think, is very</p> <p>12 important.</p> <p>13 Q The exclusive use of water frontage to</p> <p>14 any project is important. What do you</p> <p>15 mean by that?</p> <p>16 A Anything that is used -- might go on the</p> <p>17 property, the exclusive use of the water</p> <p>18 frontage to that project could be very</p> <p>19 important.</p> <p>20 Q When you say exclusive use -- strike</p> <p>21 that. Important to what? To the</p> <p>22 valuation?</p> <p>23 A To the valuation, to the users, the</p> <p>24 future users.</p> <p>25 Q Okay. Anything -- anything else that you</p>	<p style="text-align: right;">68</p> <p>1 they don't want. I don't think I should</p> <p>2 have to take the risk of finding out</p> <p>3 later how much I lost.</p> <p>4 Q How much do you think CWPCo should pay</p> <p>5 for the entire 5.083 acres?</p> <p>6 A Well, I went through what I've got in it,</p> <p>7 year by year and added a return of six</p> <p>8 percent. And it comes up close to a</p> <p>9 million dollars just to recover what I've</p> <p>10 got in there and a reasonable return on</p> <p>11 my investment. That's the bare minimum</p> <p>12 it should be.</p> <p>13 Q When you say the amount you've got in it,</p> <p>14 what are you referring to?</p> <p>15 A What I paid for it, what I paid for</p> <p>16 taxes, what I paid for clean-up, all the</p> <p>17 years I've plowed snow, mowed the lawns.</p> <p>18 Q You testified earlier that the five -- in</p> <p>19 the five purchases of the five lots, you</p> <p>20 spent approximately \$315,000.00, correct?</p> <p>21 A Correct.</p> <p>22 Q How much have you paid in taxes on that</p> <p>23 land since you acquired it? I don't need</p> <p>24 an exact number just --</p> <p>25 A Well, the first couple years I think the</p>

69	71
<p>1 taxes were around 3,000 or so. But</p> <p>2 they're up over 5 now. How many years</p> <p>3 has it been? 12 or 13 years. I'd say</p> <p>4 the average of four or five thousand</p> <p>5 dollars a year so --</p> <p>6 Q So let's say it's an average of 5,000 a</p> <p>7 year.</p> <p>8 A We're probably over 50,000. They're over</p> <p>9 five now. They've been five for quite a</p> <p>10 few years.</p> <p>11 Q And then for clean-up you said you paid</p> <p>12 7,500 in -- for the remediation and 5,000</p> <p>13 to install oversized lateral sewer lines?</p> <p>14 A Right. I have --</p> <p>15 Q And anything else?</p> <p>16 A I have taken down two houses that had</p> <p>17 asbestos in them. Those were five or six</p> <p>18 thousand apiece to get those handled.</p> <p>19 Q Did you contract with somebody to --</p> <p>20 A Yes.</p> <p>21 Q And they charged five or six thousand</p> <p>22 apiece?</p> <p>23 A Right. One was over five. One was under</p> <p>24 five. Then there was a separate company</p> <p>25 they had come in to do asbestos removal.</p>	<p>1 you spent -- since you first acquired the</p> <p>2 first parcel you've spent maybe</p> <p>3 \$25,000.00 on clean-up costs. Do you</p> <p>4 think that's right?</p> <p>5 A That's probably a little high.</p> <p>6 Q 20,000?</p> <p>7 A You're talking about removing the houses</p> <p>8 and everything?</p> <p>9 Q I'm including removing the houses.</p> <p>10 A Yeah. Probably.</p> <p>11 Q 20,000?</p> <p>12 A Probably.</p> <p>13 Q In any event, all of the costs are</p> <p>14 included in the exhibits in your summary</p> <p>15 judgment filing, correct?</p> <p>16 A I believe they are, right.</p> <p>17 Q Okay.</p> <p>18 A Not -- now, I paid -- the one building's</p> <p>19 got water in it. I paid quarterly water</p> <p>20 bills on that. I've paid for heat in it</p> <p>21 to keep the water from freezing.</p> <p>22 That freight terminal, I better</p> <p>23 go back and talk about that freight</p> <p>24 terminal again. You asked about renters</p> <p>25 before. There was power in there, and I</p>
70	72
<p>1 That was 600 to 1,000, something like</p> <p>2 that.</p> <p>3 Back to the clean-up, the</p> <p>4 environmental people, seemed like to me,</p> <p>5 were stringing it out. And I asked them,</p> <p>6 what can we do to end this? And they</p> <p>7 said, I suppose we could take the soil</p> <p>8 out. So that's what we did.</p> <p>9 And I paid somebody to haul it</p> <p>10 over to the approved landfill in</p> <p>11 Wisconsin Rapids. So that was, you know,</p> <p>12 an extra 600 to 1,000 dollars to have</p> <p>13 that done. I think that's all in here</p> <p>14 (indicating).</p> <p>15 Q That's all in your summary judgment</p> <p>16 submission?</p> <p>17 A Pretty much, yeah.</p> <p>18 Q Okay.</p> <p>19 A The documents are in there, landfill</p> <p>20 costs and what they charged and</p> <p>21 everything.</p> <p>22 Q So based on -- based on the description</p> <p>23 I'm hearing from you. Obviously, we can</p> <p>24 verify that in the summary judgment</p> <p>25 filings. It sounds like you're saying</p>	<p>1 was paying, like, \$10.00 a month average.</p> <p>2 And what I did, there is some</p> <p>3 lady from the university. She was an art</p> <p>4 teacher, wanted a place -- she had a</p> <p>5 thing of doing -- welding up metal and</p> <p>6 doing sculptures. She was in there for</p> <p>7 years, and I didn't charge her anything.</p> <p>8 Q Okay.</p> <p>9 A But I did pay for the electricity while</p> <p>10 she was back there. And then, like I</p> <p>11 said, I did the lawn mowing and shoveling</p> <p>12 the sidewalks and keeping the back plowed</p> <p>13 out for years so --</p> <p>14 Q So when you say that you think CWPCo</p> <p>15 should pay a million dollars to take the</p> <p>16 whole property, you're factoring in the</p> <p>17 expense -- the purchase price, all the</p> <p>18 expenses we talked about, including</p> <p>19 taxes, clean-up, utilities and your own</p> <p>20 personal labor?</p> <p>21 A Right.</p> <p>22 Q Plus the six percent annual appreciation</p> <p>23 rate?</p> <p>24 A A return on investment, which I'm making</p> <p>25 that on other things. I'm making more</p>

73	75
<p>1 than that on other investments so --</p> <p>2 Q What is your basis for the six number? I</p> <p>3 was about to ask you.</p> <p>4 A I have a lot of municipal bonds that are</p> <p>5 paying close to six percent state and</p> <p>6 federal tax exempt so --</p> <p>7 Q Do you have -- does your six percent</p> <p>8 number factor in the real estate downturn</p> <p>9 of the late part of the last decade?</p> <p>10 A No.</p> <p>11 Q It does not?</p> <p>12 A Because I wanted to sell that in 2007 and</p> <p>13 was prohibited. That money would have</p> <p>14 been invested from that point on making</p> <p>15 six percent.</p> <p>16 Q Okay. So your -- okay. How much do you</p> <p>17 think the property was worth in 2007, the</p> <p>18 whole property?</p> <p>19 A From other things that were going on at</p> <p>20 that time, I'd say 1.5, 1.6 maybe even.</p> <p>21 There again, that process was short</p> <p>22 circuited -- we would have found out if</p> <p>23 we could have gone ahead with that</p> <p>24 contract. We'd have found out what it</p> <p>25 was worth.</p>	<p>1 Waupaca.</p> <p>2 Q I'm going to request that you produce</p> <p>3 those to us.</p> <p>4 A Okay.</p> <p>5 Q We can talk about that after the</p> <p>6 deposition is over. Okay?</p> <p>7 A And to some extent CWPCo's own numbers</p> <p>8 bear me out.</p> <p>9 Q When you say CWPCo's own numbers, what</p> <p>10 are you referring to?</p> <p>11 A They referred to a property that they</p> <p>12 sold to the City and, you know, what they</p> <p>13 got for that land. I think --</p> <p>14 Q Are you referring to the 2003 --</p> <p>15 A Yeah.</p> <p>16 Q -- sale --</p> <p>17 A Uh-huh.</p> <p>18 Q -- that was included in your summary</p> <p>19 judgment filings?</p> <p>20 A I think so.</p> <p>21 Q Assuming that CWPCo only condemns parcel</p> <p>22 B, how much do you think you should</p> <p>23 receive in just compensation?</p> <p>24 A It's hard to say. I never intended to</p> <p>25 own four-and-a-half acres without water</p>
74	76
<p>1 Q Well, before you entered into the</p> <p>2 contract with J.L. Fischer, Inc., you had</p> <p>3 an idea of what you were -- what you</p> <p>4 planned to sell the property for, right?</p> <p>5 A Uh-huh.</p> <p>6 Q Yes?</p> <p>7 A I was anxious to find out what somebody</p> <p>8 was willing to pay, right.</p> <p>9 Q But my question was, did you have an idea</p> <p>10 of what you thought the property was</p> <p>11 worth at the time?</p> <p>12 A Yeah.</p> <p>13 Q And that was 1.5 to 1.6 --</p> <p>14 A In that area, yeah. I was willing to</p> <p>15 look at anything because I could see that</p> <p>16 the market might be turning. So I was</p> <p>17 anxious to get a number.</p> <p>18 Q In any event, you think the property is</p> <p>19 worth about a million now?</p> <p>20 A At least. You know, I think comparables</p> <p>21 could come up with higher numbers. I've</p> <p>22 got some comparables that do show higher</p> <p>23 numbers.</p> <p>24 Q What comparables are those?</p> <p>25 A A development in Wausau, development in</p>	<p>1 frontage. That was never my intention.</p> <p>2 Q What do you think parcel B on its own is</p> <p>3 worth?</p> <p>4 A Well, I think I'd have to go to what</p> <p>5 waterfront property is going for by the</p> <p>6 foot.</p> <p>7 Q Do you know that sitting here today?</p> <p>8 A It's all over the board. Green Lake it's</p> <p>9 probably \$10,000.00 a foot. Lake</p> <p>10 Winnebago is maybe 2,000 a foot.</p> <p>11 I don't know. This is unique.</p> <p>12 I know it's not the best water frontage,</p> <p>13 but it's the only water frontage around.</p> <p>14 You know, everything else is owned by the</p> <p>15 City and its parks. So this is unique.</p> <p>16 Q So do you not have an opinion, sitting</p> <p>17 here today, as to how much you should get</p> <p>18 paid for the taking of parcel B?</p> <p>19 A I think it should be at least \$2,000.00 a</p> <p>20 foot.</p> <p>21 Q And what do you base that on?</p> <p>22 A Like I said, what waterfront property has</p> <p>23 been going for throughout the years</p> <p>24 and --</p> <p>25 Q You said in Lake Winnebago it's about</p>

77	79
<p>1 \$2,000.00 a foot?</p> <p>2 A Probably. I'm guessing. That's not the</p> <p>3 most desirable lake. Green Lake is --</p> <p>4 you know, that's -- that's maybe the</p> <p>5 highest. I don't know what Lake Geneva</p> <p>6 is going for.</p> <p>7 I know this isn't Lake Geneva,</p> <p>8 and this isn't Green Lake. Green Lake</p> <p>9 had been at 10,000 a foot. But again</p> <p>10 this is the only one around, too.</p> <p>11 It's -- there just isn't any out there</p> <p>12 so --</p> <p>13 Q How much value do you think the property</p> <p>14 as a whole will lose if CWPCo takes just</p> <p>15 parcel B?</p> <p>16 A I'd say at least half. But I don't -- I</p> <p>17 want to repeat, I don't want to find out.</p> <p>18 I don't think I have to find out. It</p> <p>19 shouldn't be my -- it shouldn't be my</p> <p>20 consequence.</p> <p>21 Q But you think -- this is an important</p> <p>22 point, so, you know, I need to ask you</p> <p>23 questions about it. You believe that</p> <p>24 parcel B makes up -- strike that. You</p> <p>25 believe that the value of the property as</p>	<p>1 A You don't have the water frontage. You</p> <p>2 don't have the privacy of a water</p> <p>3 frontage. Once Consolidated or CWPCo</p> <p>4 gets it they have to let the public on.</p> <p>5 They can't keep anybody out. That might</p> <p>6 be a big negative to a condominium</p> <p>7 complex where people want some privacy</p> <p>8 when they sit by the water.</p> <p>9 Q Are you contending that your upland</p> <p>10 property has been physically damaged by</p> <p>11 CWPCo in any way?</p> <p>12 A Not yet.</p> <p>13 Q So no, not to this point?</p> <p>14 A Not to this point.</p> <p>15 Q Well, are you afraid that CWPCo is going</p> <p>16 to cause damage to your property, not to</p> <p>17 the value of the property but physical</p> <p>18 damage to the property?</p> <p>19 A I don't know.</p> <p>20 Q Are you claiming any other form of</p> <p>21 damages besides loss in value of the</p> <p>22 property?</p> <p>23 A Not now, no.</p> <p>24 Q Did you grow up in Portage County?</p> <p>25 A No.</p>
78	80
<p>1 a whole will be reduced by 50 percent if</p> <p>2 the property loses parcel B, correct?</p> <p>3 A It's a possibility. But --</p> <p>4 Q I guess, what do you base the 50 percent</p> <p>5 number on?</p> <p>6 A There's four acres downtown Stevens Point</p> <p>7 across from the mall, and I think the</p> <p>8 City owns it. There again there's the</p> <p>9 qualifier to what I'm saying. The City</p> <p>10 owns it.</p> <p>11 I think they wanted to get</p> <p>12 400,000 for that. It was an old factory</p> <p>13 site that was contaminated. I don't know</p> <p>14 if it's been cleaned up. These cities</p> <p>15 sell stuff cheap just to get development</p> <p>16 on it, get tax base.</p> <p>17 So, therefore, four acres for</p> <p>18 400,000, maybe -- mine is five acres,</p> <p>19 500,000. I don't know. Mine might be</p> <p>20 cleaner than theirs so --</p> <p>21 Q Getting specifically back to parcel B,</p> <p>22 parcel B being 0.41 acres, whereas the</p> <p>23 entire property being 5.083 acres, why do</p> <p>24 you think that losing parcel B would have</p> <p>25 the value of the full property?</p>	<p>1 Q Where did you grow up?</p> <p>2 A Ripon.</p> <p>3 Q What county is Ripon in?</p> <p>4 A Fond Du Lac.</p> <p>5 Q How did you end up down in Stevens Point,</p> <p>6 in Portage County?</p> <p>7 A When I was going to college we did</p> <p>8 hauling for Green Giant in Ripon with</p> <p>9 small trucks, hauling peas and corn. Del</p> <p>10 Monte had a plant in Markesan. And at</p> <p>11 that time we were building a new plant in</p> <p>12 Plover and wanted somebody to come up and</p> <p>13 haul green beans to the plant.</p> <p>14 So we came up. That was how we</p> <p>15 made our college money. And then we just</p> <p>16 kind of stayed in the area. We got more</p> <p>17 authority, interstate commerce authority,</p> <p>18 to haul processed potatoes, French fries,</p> <p>19 hash browns, things like that. So we</p> <p>20 just evolved into a trucking business and</p> <p>21 stayed here.</p> <p>22 Q When did you first become aware of</p> <p>23 CWPCo's operation of the dam in the</p> <p>24 Stevens Point reservoir?</p> <p>25 A I don't know.</p>

81	83
<p>1 Q It was before you bought the property?</p> <p>2 A Yes.</p> <p>3 Q Was it years before you bought the</p> <p>4 property?</p> <p>5 A Probably.</p> <p>6 Q Is it fair to say that CWPCo has been</p> <p>7 operating that dam since you moved to</p> <p>8 this area?</p> <p>9 A Yes.</p> <p>10 Q Again you knew that before you bought the</p> <p>11 property, right?</p> <p>12 A Right.</p> <p>13 Q Okay. And are you aware that CWPCo</p> <p>14 controls the water level in the</p> <p>15 impoundment?</p> <p>16 A Yes.</p> <p>17 Q And again you knew that before you bought</p> <p>18 the property, right?</p> <p>19 A Yes.</p> <p>20 Q Are you aware that the water level is</p> <p>21 mandated by FERC?</p> <p>22 A No.</p> <p>23 Q In any event, you don't have any control</p> <p>24 over the water level as it abuts your</p> <p>25 property, right?</p>	<p>1 Q And you saw it when you came to look at</p> <p>2 the property before you bought it?</p> <p>3 A Right.</p> <p>4 Q And again the ditch extended through the</p> <p>5 property -- I'm sorry. The ditch</p> <p>6 extended beyond the property in both</p> <p>7 directions, correct?</p> <p>8 A Right.</p> <p>9 Q On top of the earthen dike, there's a</p> <p>10 walking trail, correct?</p> <p>11 A There is now.</p> <p>12 Q When you say there is now, what do you</p> <p>13 believe was there before the current</p> <p>14 walking trail?</p> <p>15 A Just the top of the dike.</p> <p>16 Q Okay. People could walk on top of the</p> <p>17 dike, correct?</p> <p>18 A I suppose they could.</p> <p>19 Q It was kind of a natural walking trail,</p> <p>20 right?</p> <p>21 A With gates on both ends. So I don't know</p> <p>22 how natural that makes it.</p> <p>23 Q How would you describe what the top of</p> <p>24 the dike looked like when you first</p> <p>25 bought the property?</p>
82	84
<p>1 A No.</p> <p>2 Q None of the landowners there do, do they?</p> <p>3 A Not that I know of.</p> <p>4 Q Did you come look at the property before</p> <p>5 you bought it?</p> <p>6 A Yes.</p> <p>7 Q And when you came to the property, did</p> <p>8 you walk down by the water?</p> <p>9 A Yes.</p> <p>10 Q The dike, the earthen dike, was located</p> <p>11 and ran across the property you were</p> <p>12 looking at when you came to look at it,</p> <p>13 right?</p> <p>14 A Yes.</p> <p>15 Q And you were able to physically see the</p> <p>16 dike when you came to look at it?</p> <p>17 A Yes.</p> <p>18 Q And the dike extended beyond the property</p> <p>19 in both directions, correct?</p> <p>20 A Right.</p> <p>21 Q Referring to the drainage ditch on the</p> <p>22 property, that was located on the</p> <p>23 property at the time you purchased it,</p> <p>24 correct?</p> <p>25 A Right.</p>	<p>1 A It was gravel and grass.</p> <p>2 Q Gravel and grass. Not the fine red</p> <p>3 granite that's there now, right?</p> <p>4 A No.</p> <p>5 Q Okay. When you came to look at the</p> <p>6 property, the trail -- the gravel trail</p> <p>7 extended -- that was there at the time</p> <p>8 that you saw it -- strike that. This is,</p> <p>9 like, the worst question I've ever asked</p> <p>10 in my life. Start over.</p> <p>11 When you came to look at the</p> <p>12 property and you saw the gravel on top of</p> <p>13 the dike, that extended beyond the</p> <p>14 property in both directions, correct?</p> <p>15 A In one form or another, yes.</p> <p>16 Q Okay. Now, you contend in your summary</p> <p>17 judgment submissions that at the time you</p> <p>18 purchased the property there was, I'm</p> <p>19 quoting, no indication that CWPCo was</p> <p>20 doing maintenance, end quote, of any kind</p> <p>21 on the property, correct?</p> <p>22 A Correct.</p> <p>23 Q What do you mean by that, there was no</p> <p>24 indication?</p> <p>25 A The realtor that sold me the property</p>

85	87
<p>1 says that the physical features of that</p> <p>2 section of the dike was different than</p> <p>3 the other section, different colors of</p> <p>4 granite. He said that it was visible to</p> <p>5 him that CWPCo had done something right</p> <p>6 up to the property line and quit and</p> <p>7 started again at the other end of the</p> <p>8 property line.</p> <p>9 Q When did he tell you that?</p> <p>10 A He's always told me that.</p> <p>11 Q Did he tell you that before you bought</p> <p>12 the property?</p> <p>13 A No. I don't think so.</p> <p>14 Q So he first told you after you bought the</p> <p>15 property?</p> <p>16 A Right.</p> <p>17 Q Was it once this dispute became evident?</p> <p>18 A Yeah.</p> <p>19 Q So would you say 2007, 2008?</p> <p>20 A Probably, yeah.</p> <p>21 Q Who was the -- who was the listing agent</p> <p>22 for the property?</p> <p>23 A I think it was Chris Northwood.</p> <p>24 Q Did you use a buyer's agent when you</p> <p>25 bought the property?</p>	<p>1 see -- you know --</p> <p>2 Q You didn't go up to the edge of the dike</p> <p>3 and look to see if there was</p> <p>4 reinforcement?</p> <p>5 A I didn't get in the water and feel around</p> <p>6 to see what was there, no.</p> <p>7 Q Could you see rocks on the downslope into</p> <p>8 the water?</p> <p>9 A A little.</p> <p>10 Q Setting aside what Mr. Northwood said, do</p> <p>11 you recall at the time that you inspected</p> <p>12 the property before you purchased it</p> <p>13 whether the top of the dike on the</p> <p>14 portion of property you were looking at</p> <p>15 was different from the portion of the</p> <p>16 dike on either side?</p> <p>17 A Once he mentioned it I thought, yeah,</p> <p>18 it's -- I think he's right. But I'm not</p> <p>19 going to swear to it. You know, he kind</p> <p>20 of refreshed my memory a little bit. I</p> <p>21 didn't think of it until he mentioned it.</p> <p>22 And then I thought, well, yeah, I think</p> <p>23 he's right. That's true. But I'm not</p> <p>24 going to swear to it.</p> <p>25 Q Okay. Since you are under oath, is it</p>
86	88
<p>1 A I think I went through another realtor.</p> <p>2 I'm not sure on that. I think it was</p> <p>3 Butch West. He's since deceased.</p> <p>4 Q Did Mr. West have any -- or express any</p> <p>5 opinion on whether the appearance of the</p> <p>6 dike looked different on the section of</p> <p>7 the property that you were --</p> <p>8 A No.</p> <p>9 Q -- purchasing?</p> <p>10 A No. I don't know if he even went up</p> <p>11 there and looked at it.</p> <p>12 Q When you -- when you came to view the</p> <p>13 property before you purchased it, was the</p> <p>14 dike or the ditch on the property in a</p> <p>15 state of disrepair?</p> <p>16 A Not that I can remember.</p> <p>17 Q Was there any erosion or sloughing on the</p> <p>18 ditch or dike when you came to look at it</p> <p>19 before you bought it?</p> <p>20 A I don't recall.</p> <p>21 Q Was there any overgrowth of vegetation?</p> <p>22 A No, that I recall.</p> <p>23 Q Was there riprap located on the water</p> <p>24 side of the embankment?</p> <p>25 A Well, there was water there. I couldn't</p>	<p>1 fair to say that the answer to my</p> <p>2 question is that you don't recall?</p> <p>3 A Right.</p> <p>4 Q Okay. Fair enough. Who did you think</p> <p>5 was -- who do you think was maintaining</p> <p>6 that section of the dike?</p> <p>7 A I didn't know if anybody was maintaining</p> <p>8 it. And it's maybe time we start</p> <p>9 talking -- calling it what it really was.</p> <p>10 It was a railroad spur. That's where --</p> <p>11 when I saw -- when I went there the first</p> <p>12 time and saw gravel and everything else,</p> <p>13 to me it was a railroad spur.</p> <p>14 Q Were there railroad ties sitting on top</p> <p>15 of the dike?</p> <p>16 A No.</p> <p>17 Q Was it being used in connection with rail</p> <p>18 transport in any way?</p> <p>19 A Not at that time.</p> <p>20 Q Is it your contention in this lawsuit</p> <p>21 that since you bought the property CWPCo</p> <p>22 has not performed inspections on the dike</p> <p>23 as it crosses the property?</p> <p>24 A I don't know.</p> <p>25 Q Well, the reason I ask is because when --</p>

89	91
<p>1 CWPCo submitted a proposed finding of</p> <p>2 fact that it has, and you disputed that</p> <p>3 fact. And I'm asking you what the basis</p> <p>4 for that dispute is.</p> <p>5 A Because I don't know if they did or not.</p> <p>6 They probably did maintenance or</p> <p>7 inspections or whatever on parts of the</p> <p>8 dike. That particular 320 feet I don't</p> <p>9 know if they did or not. I don't know if</p> <p>10 they can prove that they did or not.</p> <p>11 So --</p> <p>12 Q Is it your contention that since you</p> <p>13 bought the property CWPCo has never</p> <p>14 removed brush, weeds, trees or other</p> <p>15 vegetation from the section of the dike</p> <p>16 that crosses your property?</p> <p>17 A I don't know.</p> <p>18 Q Since you've purchased the property, have</p> <p>19 you noticed that vegetation that had</p> <p>20 grown on the dike had been removed?</p> <p>21 A I think they mowed it once or twice. I</p> <p>22 don't know. In recent years they've done</p> <p>23 a lot of things that they didn't do ten</p> <p>24 years ago.</p> <p>25 Q Such as?</p>	<p>1 does it because it's walking trail now.</p> <p>2 I don't know.</p> <p>3 Q Have you ever seen the City out there</p> <p>4 doing it?</p> <p>5 A No. I haven't seen anybody out there</p> <p>6 doing it.</p> <p>7 Q Have you ever seen the City out there</p> <p>8 performing any maintenance on the dike at</p> <p>9 all?</p> <p>10 A No.</p> <p>11 Q Have you ever seen them performing any</p> <p>12 maintenance on the ditch?</p> <p>13 A I haven't seen anybody doing any</p> <p>14 maintenance on the dike or ditch except</p> <p>15 when they were trespassing two years ago.</p> <p>16 Q I'm going to ask you about that in a</p> <p>17 minute.</p> <p>18 A Okay.</p> <p>19 Q Do you have any evidence to suggest that</p> <p>20 CWPCo has not monitored the effects of</p> <p>21 weather conditions on the dike as it</p> <p>22 crosses your property since the time you</p> <p>23 purchased the property?</p> <p>24 A No.</p> <p>25 Q Have you ever seen any trees that fell</p>
90	92
<p>1 A Mowing it.</p> <p>2 Q So they never --</p> <p>3 A I don't think they used to. I think it's</p> <p>4 something new they started in the last</p> <p>5 few years. Even their own section I</p> <p>6 don't think they used to mow it like</p> <p>7 they're doing now.</p> <p>8 Q But you don't know that they didn't mow</p> <p>9 it ten years ago?</p> <p>10 A No. It looks a lot different now than it</p> <p>11 did ten years ago.</p> <p>12 Q Well --</p> <p>13 A It looks mowed now. It looks like</p> <p>14 they're doing something. It didn't ten</p> <p>15 years ago, no. Not to me.</p> <p>16 Q What part of the -- what part of the dike</p> <p>17 needs to be mowed?</p> <p>18 A I don't know if any of it does. But</p> <p>19 they're doing a slope, inland slope.</p> <p>20 Q Slope going down to the ditch?</p> <p>21 A Right.</p> <p>22 Q Do they have riders or push mowers or --</p> <p>23 A I've never seen them do it. I don't know</p> <p>24 what they're using. And I'm not even</p> <p>25 sure they're doing it. Maybe the City</p>	<p>1 across the dike or ditch as it crosses</p> <p>2 your property?</p> <p>3 A I don't think so. I don't know. I've</p> <p>4 seen some across the dike. I don't</p> <p>5 remember if it was on my section or -- I</p> <p>6 mean across the ditch. I think what I</p> <p>7 saw was on their side, on their piece.</p> <p>8 Q What you saw -- the tree that you saw</p> <p>9 laying across the dike, did CWPCo remove</p> <p>10 it?</p> <p>11 A I don't know.</p> <p>12 Q It was removed, though, correct?</p> <p>13 A I don't know that either. It might still</p> <p>14 be there. I don't know.</p> <p>15 Q When was that?</p> <p>16 A A year or two ago.</p> <p>17 Q Okay. How often do you go out to the</p> <p>18 property?</p> <p>19 A Are you talking about parcel B?</p> <p>20 Q Parcel B.</p> <p>21 A Three, four times a year maybe.</p> <p>22 Q Now, you know that CWPCo had submitted</p> <p>23 four declarations from current and former</p> <p>24 employees testifying that CWPCo's done</p> <p>25 all these things regularly on parcel B</p>

93	95
<p>1 since before 1951, correct?</p> <p>2 A Correct.</p> <p>3 Q The question is, you know we have</p> <p>4 submitted declarations?</p> <p>5 A Declarations, yes. Specifically, if</p> <p>6 they're talking about parcel B I don't</p> <p>7 know that for sure, no.</p> <p>8 Q Do you have any reason to think that</p> <p>9 those four declarants are not telling the</p> <p>10 truth?</p> <p>11 A About what?</p> <p>12 Q That CWPCo has been performing</p> <p>13 maintenance and all the things that we</p> <p>14 just talked about on parcel B since</p> <p>15 before 1951.</p> <p>16 A I have no reason to believe them or not</p> <p>17 believe them.</p> <p>18 Q Okay. Other than the document from</p> <p>19 Mr. Northwood. In your response to</p> <p>20 CWPCo's proposed finding of fact number</p> <p>21 49, you stated that the ditch that</p> <p>22 crosses the property is a, quote, City of</p> <p>23 Stevens Point Public Works structure, end</p> <p>24 quote. Do you recall saying that?</p> <p>25 A Yes.</p>	<p>1 not -- I'm not -- maybe the City built</p> <p>2 it, because they're sure using it.</p> <p>3 Q Do you know whether the City of Stevens</p> <p>4 Point is using it with CWPCo's</p> <p>5 permission?</p> <p>6 A No.</p> <p>7 Q Have you ever seen the City of Stevens</p> <p>8 Point doing maintenance on the ditch?</p> <p>9 A I'm not -- I don't -- I don't -- early on</p> <p>10 after I bought it, somebody did something</p> <p>11 there. And I -- I'm not going to -- I</p> <p>12 don't know who did. Seemed like it was</p> <p>13 dredged maybe. And I almost think the</p> <p>14 City did it. But I'm not saying -- I'm</p> <p>15 not -- I don't know.</p> <p>16 Q Shortly after you bought the property,</p> <p>17 you noticed the ditch had been dredged?</p> <p>18 A I think so. Somewhere in that time</p> <p>19 somebody did some clean-up in there. And</p> <p>20 I don't know who did it.</p> <p>21 Q Okay.</p> <p>22 A During that time I did talk to the City,</p> <p>23 and they stressed to me how important</p> <p>24 that was to their park system. And their</p> <p>25 drainage system was that culvert and that</p>
94	96
<p>1 Q Did the City dig the ditch?</p> <p>2 A I don't know. I -- I don't think anybody</p> <p>3 did. I think it was there when they put</p> <p>4 the railroad spur in. That's --</p> <p>5 Q Why do you think it's a City of Stevens</p> <p>6 Point Public Works structure?</p> <p>7 A North -- north of my property is a park,</p> <p>8 a City park, on the other side of Clark</p> <p>9 Street. From there there's a drainage --</p> <p>10 from the park, that whole park drains</p> <p>11 into a culvert that goes under the</p> <p>12 highway and dumps into the ditch on the</p> <p>13 north side of the -- of the ditch. That</p> <p>14 water is coming through, and it empties</p> <p>15 out on the south side.</p> <p>16 So if you plug up that culvert</p> <p>17 the park is going to flood. So I'm</p> <p>18 guessing that the City is using it as a</p> <p>19 public -- you know, as a -- what do they</p> <p>20 call it?</p> <p>21 Q Well, you refer to it as a public works</p> <p>22 structure?</p> <p>23 A Well, I believe it is. I don't know what</p> <p>24 else you could call it. They're using</p> <p>25 it. And I don't know who built it. I'm</p>	<p>1 ditch.</p> <p>2 Q Okay.</p> <p>3 A I think they must have something to say</p> <p>4 about it. And whether or not they're</p> <p>5 willing to come over there and clean it</p> <p>6 out to their benefit, maybe they are. I</p> <p>7 don't know.</p> <p>8 Q Speaking specifically about CWPCo's use</p> <p>9 of parcel B, is there anything else about</p> <p>10 the way CWPCo uses or has used parcel B</p> <p>11 that you think is relevant to the present</p> <p>12 dispute or that you intend to present</p> <p>13 evidence of at trial?</p> <p>14 A No.</p> <p>15 Q Okay. Now, you contend that before you</p> <p>16 bought the property you had a meeting</p> <p>17 with Mark Anderson of CWPCo, correct?</p> <p>18 A Uh-huh.</p> <p>19 Q Yes?</p> <p>20 A Yes.</p> <p>21 Q And you contend that that meeting took</p> <p>22 place at CWPCo's offices in Rapids,</p> <p>23 correct?</p> <p>24 A I believe it did.</p> <p>25 Q And can you give me an approximate date</p>

97	99
<p>1 for the meeting?</p> <p>2 A I think it was around July 22nd,</p> <p>3 somewhere in there.</p> <p>4 Q Of 1998?</p> <p>5 A Right. Yes.</p> <p>6 Q And do you have -- strike that. Who else</p> <p>7 was at the meeting, if anybody?</p> <p>8 A I don't know if anybody else was.</p> <p>9 Q It was just you and Mr. Anderson?</p> <p>10 A I believe so.</p> <p>11 Q Do you remember what time of day?</p> <p>12 A I think it was early, 7:15 or 7:30 in the</p> <p>13 morning.</p> <p>14 Q Now, you further contend that at that</p> <p>15 meeting you informed Mr. Anderson that</p> <p>16 you were interested in buying the</p> <p>17 property and including parcel B, correct?</p> <p>18 A Correct.</p> <p>19 Q And it's also your contention that at</p> <p>20 that meeting you asked Mr. Anderson if</p> <p>21 CWPCo had any interest in buying the</p> <p>22 property, correct?</p> <p>23 A I don't know if I used those exact words</p> <p>24 or not.</p> <p>25 Q What words did you use?</p>	<p>1 ditch on the property, correct?</p> <p>2 A Right.</p> <p>3 Q Did you ask Mr. Anderson if CWPCo</p> <p>4 contended that it owned the property,</p> <p>5 that it owned that portion of the land,</p> <p>6 parcel B?</p> <p>7 A I won't use those words because I don't</p> <p>8 remember exactly what I said.</p> <p>9 Q Well, you said you wanted to go clear up</p> <p>10 the ownership issues so --</p> <p>11 A I showed him the survey, showed him the</p> <p>12 survey, that they did not own it. And at</p> <p>13 that point he could have said, yeah, we</p> <p>14 do. And I would have walked away. He</p> <p>15 didn't. He didn't show any interest in</p> <p>16 the idea of it. They did not own it.</p> <p>17 Q Do you recall what he said in response to</p> <p>18 seeing the survey?</p> <p>19 A No. No. He didn't say anything that</p> <p>20 would stop -- would have stopped me from</p> <p>21 purchasing it. And that's why I went</p> <p>22 there, to see if there was any problem.</p> <p>23 Q Well, I guess the question is then, what</p> <p>24 did he say?</p> <p>25 A I don't know. Specifically? That's a</p>
98	100
<p>1 A Well, I just informed them that that land</p> <p>2 was for sale, including the dike and</p> <p>3 water frontage, and I wanted to find out</p> <p>4 if there was any ownership issues before</p> <p>5 I proceeded.</p> <p>6 Q What specifically did you ask</p> <p>7 Mr. Anderson about the ownership issues?</p> <p>8 A I don't know the exact words.</p> <p>9 Q Well, that's fine --</p> <p>10 A It was important to me at that time to</p> <p>11 find out if there was going to be any</p> <p>12 trouble with me buying that property.</p> <p>13 Because I didn't want any trouble. I had</p> <p>14 other places I could go to invest. I</p> <p>15 didn't have to invest in that. The</p> <p>16 ownership issue was very important. I</p> <p>17 wanted to make sure there was no</p> <p>18 contentions over it.</p> <p>19 Q Well, why did you go to CWPCo in the</p> <p>20 first place? What --</p> <p>21 A Because of the hydroelectric --</p> <p>22 Q Project?</p> <p>23 A -- project that they had there, yeah.</p> <p>24 Q So you went to CWPCo because you knew</p> <p>25 that CWPCo was using the dike and the</p>	<p>1 long time ago.</p> <p>2 Q Did you take any notes at that meeting?</p> <p>3 A No.</p> <p>4 Q Do you still have a copy of the survey</p> <p>5 that you showed Mr. Anderson?</p> <p>6 A I believe so. Yeah.</p> <p>7 Q Probably ask you -- I'm going to ask you</p> <p>8 to produce that to me as well.</p> <p>9 A The exact same piece of paper?</p> <p>10 Q Or a copy of it.</p> <p>11 A Okay.</p> <p>12 Q An identical copy, I guess. Again, we</p> <p>13 can talk about that after the --</p> <p>14 A I think it's in here.</p> <p>15 Q Oh, you think it's in the summary</p> <p>16 judgment submissions?</p> <p>17 A Probably, yeah.</p> <p>18 Q Okay. We can talk about that off the</p> <p>19 record, too.</p> <p>20 MR. LEE: Let's go off the</p> <p>21 record.</p> <p>22 (Discussion held off the</p> <p>23 record.)</p> <p>24 EXAMINATION</p> <p>25 BY MR. LEE:</p>

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<p>1 Q I'm not going to mark this as an exhibit,</p> <p>2 but I'm referring you to the last page of</p> <p>3 Exhibit 501 from your summary judgment</p> <p>4 submissions. And I'm showing it to you</p> <p>5 now. Do you recognize this document?</p> <p>6 A Yes.</p> <p>7 Q Can you describe it for me?</p> <p>8 A It's the south portion of a survey of the</p> <p>9 land that I purchased in 1998 --</p> <p>10 Q And --</p> <p>11 A -- with the water frontage.</p> <p>12 Q Is it your testimony that you showed this</p> <p>13 piece of paper to Mr. Anderson at your</p> <p>14 1998 meeting?</p> <p>15 A Either this one or a copy of it. I have</p> <p>16 several of these in my file, so yeah.</p> <p>17 Q You showed him this certified --</p> <p>18 A Right.</p> <p>19 Q -- survey map?</p> <p>20 A Right.</p> <p>21 Q Okay. And when you presented the</p> <p>22 certified survey map to him, did you</p> <p>23 affirmatively state that you didn't think</p> <p>24 CWPCo owned the property?</p> <p>25 A I said, this map shows that you do not</p>	<p>1 could buy the property if it wanted to?</p> <p>2 A No. That's pretty -- it's on the market.</p> <p>3 Anybody could have bought it. I didn't</p> <p>4 need to tell him that.</p> <p>5 Q After you met with Mr. Anderson, did you</p> <p>6 tell anybody about the substance of your</p> <p>7 meeting with him?</p> <p>8 A No.</p> <p>9 Q Not your wife or anybody?</p> <p>10 A Not that I remember.</p> <p>11 Q How about Mr. Northwood?</p> <p>12 A The meeting confirmed everything I was</p> <p>13 told. So I didn't need to discuss it</p> <p>14 with anybody.</p> <p>15 Q Okay. You didn't discuss it with</p> <p>16 Mr. West?</p> <p>17 A I don't think so. I don't remember.</p> <p>18 Q You stated in your reply to the notice of</p> <p>19 condemnation that CWPCo informed you in a</p> <p>20 letter that it was not interested in</p> <p>21 purchasing the property. Do you recall</p> <p>22 saying that?</p> <p>23 A No. Oh. I think that was in reply to</p> <p>24 Carl Lemke's remarks.</p> <p>25 (Moodie Exhibit No. 4 marked for</p>
102	104
<p>1 own the water frontage. Is this a</p> <p>2 problem?</p> <p>3 Q And he said in response?</p> <p>4 A I don't remember what he said. But he</p> <p>5 did not put up any red flags or say, wait</p> <p>6 a minute, we own that. He did nothing of</p> <p>7 that nature. That's why I went to him,</p> <p>8 because I did not want the same problem,</p> <p>9 this very problem we're having now.</p> <p>10 Q Did he tell you in that meeting that</p> <p>11 CWPCo operated the -- well, strike that.</p> <p>12 Did he tell you in that meeting that</p> <p>13 CWPCo used the dike and the ditch across</p> <p>14 the property?</p> <p>15 A I don't believe he told me that. I don't</p> <p>16 know. I don't remember his exact words.</p> <p>17 Q Was there any follow-up correspondence</p> <p>18 between you and CWPCo about your meeting</p> <p>19 with Mr. Anderson before you bought the</p> <p>20 property?</p> <p>21 A No. Not that I can recall.</p> <p>22 Q When you met with Mr. Anderson, did you</p> <p>23 tell him that the property was for sale?</p> <p>24 A Yes.</p> <p>25 Q Did you tell him that you thought CWPCo</p>	<p>1 identification.)</p> <p>2 THE WITNESS: He states that the</p> <p>3 realtor contacted him. And at that time</p> <p>4 they weren't interested in it. That's</p> <p>5 what Karl Lemke said. I'm not going to</p> <p>6 attest to anything other than that.</p> <p>7 EXAMINATION</p> <p>8 BY MR. LEE:</p> <p>9 Q Show you what's been marked Moodie</p> <p>10 Exhibit No. 4. Do you recognize this</p> <p>11 document?</p> <p>12 A Yes.</p> <p>13 Q Do you want to take a minute to review</p> <p>14 it?</p> <p>15 A Okay.</p> <p>16 Q Can you tell me what the document is?</p> <p>17 A It's a letter to me dated May 22, 2007</p> <p>18 written by Mark Anderson.</p> <p>19 Q In the first paragraph in the sixth line</p> <p>20 down, the sentence beginning, I</p> <p>21 contacted, do you see where I'm</p> <p>22 referring?</p> <p>23 A Yes.</p> <p>24 Q It says, I contacted Carl Lemke to</p> <p>25 inquire on his recollection of this</p>

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<p>1 parcel?</p> <p>2 A You're speaking of Mark Anderson saying</p> <p>3 this now?</p> <p>4 Q Correct. And he indicated that he was</p> <p>5 contacted by a realtor about the land</p> <p>6 behind the dike but was given no</p> <p>7 indication that this parcel included a</p> <p>8 portion of the dike. Did I read that</p> <p>9 correctly?</p> <p>10 A Correct.</p> <p>11 Q Is that what you were referring to when</p> <p>12 you said that CWPCo informed you in a</p> <p>13 letter it was not interested in</p> <p>14 purchasing the property?</p> <p>15 A Right.</p> <p>16 Q Okay. Are there any other meetings or</p> <p>17 interactions with CWPCo employees or</p> <p>18 representatives, besides the one with</p> <p>19 Mr. Anderson in 1998, that you think are</p> <p>20 relevant to the present dispute and which</p> <p>21 you intend to present evidence of at</p> <p>22 trial?</p> <p>23 A There's been a lot of contact between us.</p> <p>24 And I -- there may be some things I'll</p> <p>25 bring up at the trial. I haven't</p>	<p>1 THE WITNESS: Yes.</p> <p>2 EXAMINATION</p> <p>3 BY MR. LEE:</p> <p>4 Q Do you believe that that meeting or</p> <p>5 anything that was said there is relevant</p> <p>6 to this lawsuit?</p> <p>7 A I'm not exactly -- we had a couple</p> <p>8 meetings with Mr. Scharff. I'm not sure</p> <p>9 which one you're exactly referring to.</p> <p>10 Q Are there any meetings --</p> <p>11 A I know Doug Clark was at one of them.</p> <p>12 Was that the one you were talking about?</p> <p>13 Q I don't know. You tell me.</p> <p>14 A I don't know.</p> <p>15 Q I'm trying to --</p> <p>16 A I don't know the dates.</p> <p>17 Q I'm trying to identify conversations</p> <p>18 that -- in which CWPCo made</p> <p>19 representations that you think are</p> <p>20 relevant to the lawsuit.</p> <p>21 A There was a meeting with Mr. Scharff and</p> <p>22 Mr. Witt. I don't know the date. So I</p> <p>23 can't -- I can't answer exactly what --</p> <p>24 to what -- your question.</p> <p>25 Q Is that the last time you met with Mr.</p>
106	108
<p>1 outlined any of them yet. There's a lot</p> <p>2 of correspondence that will be brought</p> <p>3 up. As far as conversations, possibly.</p> <p>4 Q Can you tell me what conversations those</p> <p>5 are?</p> <p>6 A Throughout the years they have come to me</p> <p>7 with the idea of buying the water</p> <p>8 frontage from me. And those discussions</p> <p>9 might come up.</p> <p>10 Q How many times did they offer to buy the</p> <p>11 water frontage?</p> <p>12 A They didn't ever -- well, once they</p> <p>13 offered to buy it.</p> <p>14 Q Was that in July of '09?</p> <p>15 A Right. Previous to that they always</p> <p>16 wanted to trade, never purchase anything.</p> <p>17 Q I know you had a meeting with Mr. Witt</p> <p>18 and Mr. Scharff in August of 2009,</p> <p>19 correct?</p> <p>20 A Probably.</p> <p>21 Q And was that at CWPCo's office?</p> <p>22 A Uh-huh.</p> <p>23 (At this time, the court</p> <p>24 reporter admonished the witness</p> <p>25 to answer verbally.)</p>	<p>1 Witt and Mr. Scharff?</p> <p>2 A I'm not sure -- I know there was a last</p> <p>3 time, but I don't know what the date of</p> <p>4 that last time was.</p> <p>5 Q Don't worry about the date. If we talk</p> <p>6 about the last meeting, then that's fine.</p> <p>7 A The last one. Okay. Possibly.</p> <p>8 Q Possibly. What was said during that</p> <p>9 meeting?</p> <p>10 A I discussed their offer with them. And</p> <p>11 then I tried to discuss a counteroffer.</p> <p>12 And he walked out of the room.</p> <p>13 Q Who walked out of the room?</p> <p>14 A Mr. Scharff.</p> <p>15 Q Did Mr. Witt stay in the room?</p> <p>16 A He did.</p> <p>17 Q Did you continue the discussion with him?</p> <p>18 A We had a few minutes, but nothing was</p> <p>19 accomplished. He didn't have authority</p> <p>20 to accomplish anything, that I could</p> <p>21 tell.</p> <p>22 Q Can you think of any other conversations</p> <p>23 you had with Mr. Witt that addressed the</p> <p>24 issues in this lawsuit?</p> <p>25 A Not any verbal conversations, no. I will</p>

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<p>1 probably be referring to all the</p> <p>2 declarations that they submitted already.</p> <p>3 Q How about Mr. Scharff? Any conversations</p> <p>4 with Mr. Scharff that are relevant to the</p> <p>5 issues in this lawsuit?</p> <p>6 A I guess just his attitude.</p> <p>7 Q And describe that.</p> <p>8 A I'm not going to say anything.</p> <p>9 Q Well, if you're going to raise his</p> <p>10 attitude at trial, I need to know what</p> <p>11 you're going to say about it. I'm</p> <p>12 entitled to know if you think it's</p> <p>13 relevant. If you don't think it's</p> <p>14 relevant, then it's not a problem.</p> <p>15 A I think it was very reluctant to listen</p> <p>16 to my point of view.</p> <p>17 Q Are there any conversations that you had</p> <p>18 with Mr. Anderson that you think are</p> <p>19 relevant to the issues in this lawsuit</p> <p>20 besides the one we discussed in detail</p> <p>21 earlier?</p> <p>22 A Possibly. I think it was 2005. I don't</p> <p>23 have exact dates. I do at home. I don't</p> <p>24 have them here. Mr. Anderson asked to</p> <p>25 meet me at the property. And I did.</p>	<p>1 Anything coming from the park would go</p> <p>2 through the culvert just like it does now</p> <p>3 in the ditch. That would enhance the</p> <p>4 whole area. And maybe -- if that could</p> <p>5 be done maybe we could do something.</p> <p>6 He said he'd have to talk to the</p> <p>7 city, to FERC, to other people. The idea</p> <p>8 of the perforated sock-covered culvert,</p> <p>9 we already discussed that back in 1999.</p> <p>10 The Corps of Engineers was in favor of</p> <p>11 it. The City was in favor of it. The</p> <p>12 DNR was in favor of it.</p> <p>13 But it never went anywhere. He</p> <p>14 said he'd check with all these people and</p> <p>15 get back to me.</p> <p>16 Q And did he?</p> <p>17 A No. I called him twice over the next two</p> <p>18 years. One time I got an answering</p> <p>19 service to leave a message. One time</p> <p>20 nobody answered.</p> <p>21 I finally got ahold of him in</p> <p>22 2007 and asked him what he found out. He</p> <p>23 says, oh, we can't do any of that. Then</p> <p>24 I found out that he was in Iraq for a</p> <p>25 whole year. To be honest with you, I</p>
110	112
<p>1 Q Okay.</p> <p>2 A He asked me something like, what can we</p> <p>3 do to get this issue straightened out? I</p> <p>4 was always reluctant to give up ownership</p> <p>5 because of the privacy issue that I would</p> <p>6 give up. But I did throw out some</p> <p>7 suggestions that may have enticed me to</p> <p>8 go along with what they wanted.</p> <p>9 The strip of land that they</p> <p>10 owned east of me between me and the</p> <p>11 river, there's -- it's brushy. It's</p> <p>12 overgrown, dead trees. I asked if that</p> <p>13 could be cleaned up.</p> <p>14 There's a few wetlands in there.</p> <p>15 I said, do you have the ability to</p> <p>16 mitigate wetlands? You have a wetlands</p> <p>17 bank that you use for other projects. I</p> <p>18 said, is it possible for me when I fill</p> <p>19 mine that I could fill all the way to the</p> <p>20 dike?</p> <p>21 The ditch that's there, we could</p> <p>22 put a perforated sock-covered culvert in</p> <p>23 there so that any water coming through</p> <p>24 the dike would go into the culvert and go</p> <p>25 out just like it does in the ditch.</p>	<p>1 don't think he checked with anybody. So</p> <p>2 that conversation might come up.</p> <p>3 Q Any other conversations with</p> <p>4 Mr. Anderson?</p> <p>5 A I think I'll rely on the written</p> <p>6 documents that were already submitted.</p> <p>7 Q So no?</p> <p>8 A No.</p> <p>9 Q I'm going to ask you some questions about</p> <p>10 the Green Circle Trail. After you</p> <p>11 acquired the property, you granted an</p> <p>12 easement to the Portage County Park</p> <p>13 Commission?</p> <p>14 A I think they call them the Green Circle</p> <p>15 Committee or the -- I don't know what</p> <p>16 they call themselves.</p> <p>17 (Moodie Exhibit No. 5 marked for</p> <p>18 identification.)</p> <p>19 EXAMINATION</p> <p>20 BY MR. LEE:</p> <p>21 Q Showing you what's been marked Moodie</p> <p>22 Exhibit 5. Do you need a minute to</p> <p>23 review it?</p> <p>24 A No.</p> <p>25 Q Do you recognize Moodie Exhibit 5?</p>

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<p>1 A Yes.</p> <p>2 Q Can you tell me what it is?</p> <p>3 A It's a Green Circle Trail agreement.</p> <p>4 Q And by this agreement you purport to</p> <p>5 grant easement rights to the Portage</p> <p>6 County Park Commission to use a portion</p> <p>7 of your property as part of the Green</p> <p>8 Circle Trail, correct?</p> <p>9 A As temporary. It's not permanent.</p> <p>10 Q Temporary easement rights, correct?</p> <p>11 A Right.</p> <p>12 Q Now, the easement is dated October 20,</p> <p>13 1999, correct?</p> <p>14 A Correct.</p> <p>15 Q Prior to that date did you ever see</p> <p>16 anybody walking or biking or jogging</p> <p>17 across the top of the dike?</p> <p>18 A Not that I recall, no. I think I saw</p> <p>19 people fishing out there.</p> <p>20 Q In the water -- standing on the dike?</p> <p>21 A Standing on the dike maybe, yeah.</p> <p>22 Q How did this easement document come</p> <p>23 about?</p> <p>24 A This man at the top, Roy Menzl, contacted</p> <p>25 me. He was a retired person that had</p>	<p>1 no way of confirming it. It's irrelevant</p> <p>2 anyway, isn't it, because they already</p> <p>3 had permission from me?</p> <p>4 Q I can't answer your questions on the</p> <p>5 record. Sorry.</p> <p>6 A Okay.</p> <p>7 Q To your knowledge, other than -- other</p> <p>8 than your easement and assuming CWPCo's</p> <p>9 right about its easement, are there any</p> <p>10 other easements crossing parcel B?</p> <p>11 A I don't think so.</p> <p>12 Q Are there any other encumbrances on</p> <p>13 parcel B, covenants or anything?</p> <p>14 A No.</p> <p>15 Q What about the rest of your property?</p> <p>16 Are there any covenants or other</p> <p>17 encumbrances?</p> <p>18 A Not that I know of. I'm trying to think</p> <p>19 of any natural gas lines or anything like</p> <p>20 that. I don't think there is. There are</p> <p>21 power lines here on this parcel</p> <p>22 (indicating).</p> <p>23 Q Referring to Moodie Exhibit 2?</p> <p>24 A Yeah. I think there's power lines down</p> <p>25 here (indicating).</p>
114	116
<p>1 a -- I think a public relations firm or</p> <p>2 something. And he was part of the Green</p> <p>3 Circle Committee. And he was out looking</p> <p>4 for people to help put a trail together.</p> <p>5 Q Were you compensated for granting this</p> <p>6 easement?</p> <p>7 A No.</p> <p>8 Q Did you get any tax benefits from it?</p> <p>9 A No. Never claimed any.</p> <p>10 Q Have you granted any other easements or</p> <p>11 rights of access across parcel B?</p> <p>12 A No.</p> <p>13 Q Or across any portion of your property?</p> <p>14 A No.</p> <p>15 Q Now, you're aware, you know, once we</p> <p>16 finally filed the thing that CWPCo also</p> <p>17 granted an easement across parcel B for</p> <p>18 use of the Green Circle Trail, correct?</p> <p>19 A I don't know if they granted permission</p> <p>20 over parcel B or just their own dike.</p> <p>21 Q Okay. I see. You understand that CWPCo</p> <p>22 is contending that it granted an easement</p> <p>23 across parcel B for the Green Circle</p> <p>24 Trail, right?</p> <p>25 A That's what they're contending. I have</p>	<p>1 Q Talking about the western border of lot</p> <p>2 number 3?</p> <p>3 A Uh-huh.</p> <p>4 (At this time, the court</p> <p>5 reporter admonished the witness</p> <p>6 to answer verbally.)</p> <p>7 THE WITNESS: Yes. And I don't</p> <p>8 know if they're permanent easements to</p> <p>9 the power company. They may have just</p> <p>10 been used to bring power to the building</p> <p>11 that's the old freight terminal. I don't</p> <p>12 think it goes out anywhere from there.</p> <p>13 EXAMINATION</p> <p>14 BY MR. LEE:</p> <p>15 Q So they're just power lines sitting there</p> <p>16 not servicing anything?</p> <p>17 A Right. Actually, I had the power removed</p> <p>18 from this building when the art teacher</p> <p>19 moved out.</p> <p>20 Q Okay.</p> <p>21 A And I paid to have the power taken out.</p> <p>22 And they removed a transformer and so</p> <p>23 forth down over there. So -- so I think</p> <p>24 probably not. I don't think there's any</p> <p>25 easements.</p>

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<p>1 Q In your response to CWPCo's proposed</p> <p>2 findings of fact 71 through 78, you</p> <p>3 assert that the Green Circle Trail</p> <p>4 committee, quote, recognized, end quote,</p> <p>5 that CWPCo lacks authority to grant the</p> <p>6 easement it purportedly granted across</p> <p>7 your property. Do you recall stating</p> <p>8 that?</p> <p>9 A It was evident to me that, why would they</p> <p>10 get an easement from me if they thought</p> <p>11 they needed one from them?</p> <p>12 Q Well, in any event, do you recall</p> <p>13 stating -- I have the response if you'd</p> <p>14 like to look at it.</p> <p>15 A Yeah.</p> <p>16 MR. LEE: Okay.</p> <p>17 (Moodie Exhibit No. 6 marked for</p> <p>18 identification.)</p> <p>19 EXAMINATION</p> <p>20 BY MR. LEE:</p> <p>21 Q Showing you what's been marked Moodie</p> <p>22 Exhibit 6. Do you recognize the</p> <p>23 document?</p> <p>24 A Yes.</p> <p>25 Q These are your responses to CWPCo's</p>	<p>1 the Green Circle Trail committee made?</p> <p>2 A No.</p> <p>3 Q Or anyone with the Portage County Park</p> <p>4 Commission made?</p> <p>5 A No.</p> <p>6 Q Now, you contend that the color of the</p> <p>7 gravel on parcel B and on the dike</p> <p>8 extending in either direction was</p> <p>9 different at the time you bought the</p> <p>10 property, correct?</p> <p>11 A That's what Mr. Northwood attested to,</p> <p>12 yeah.</p> <p>13 Q Do you have any basis for that contention</p> <p>14 other than what Mr. Northwood testified</p> <p>15 to?</p> <p>16 A No.</p> <p>17 Q You don't have any pictures of any of</p> <p>18 this?</p> <p>19 A No.</p> <p>20 Q But it's your contention that CWPCo</p> <p>21 spread gravel on all portions of the dike</p> <p>22 except parcel B, right?</p> <p>23 A That's what Mr. Northwood's observation</p> <p>24 was.</p> <p>25 Q The gravel is uniform now, correct?</p>
118	120
<p>1 proposed findings of fact, correct?</p> <p>2 A Correct.</p> <p>3 Q If you turn to page 5 of 10, I'll give</p> <p>4 you a moment to just read 71-78. You can</p> <p>5 read that whole paragraph. Let me know</p> <p>6 when you're done.</p> <p>7 A Okay.</p> <p>8 Q Referring you specifically to the</p> <p>9 sentence, CWPCo does not have authority</p> <p>10 to give permission to allow others to use</p> <p>11 land that they do not own, and the Green</p> <p>12 Circle Committee recognized that, did I</p> <p>13 read that correctly?</p> <p>14 A Yes.</p> <p>15 Q I'm just focusing on everything after the</p> <p>16 comma.</p> <p>17 A Okay.</p> <p>18 Q When did the Green Circle Committee</p> <p>19 recognize that CWPCo doesn't have</p> <p>20 authority to grant the easement across</p> <p>21 parcel B?</p> <p>22 A I would guess it was in 1999 when they</p> <p>23 got the easement from me.</p> <p>24 Q So when you say that, you're not</p> <p>25 referring to any statement that anyone on</p>	<p>1 A Correct.</p> <p>2 Q And it's been uniform for a number of</p> <p>3 years now, correct?</p> <p>4 A Correct.</p> <p>5 Q Would you say ten years?</p> <p>6 A Yeah. Probably. Close.</p> <p>7 Q Referring to Mr. Lemke's -- I'm sorry,</p> <p>8 Mr. Anderson's statement that a realtor</p> <p>9 approached Mr. Lemke to gauge CWPCo's</p> <p>10 interest in buying the property, can you</p> <p>11 recall that statement from Mr. Anderson,</p> <p>12 from Exhibit 4?</p> <p>13 A Right.</p> <p>14 Q Was that the first you'd heard of that</p> <p>15 meeting with the real estate agent and</p> <p>16 CWPCo?</p> <p>17 A Yes.</p> <p>18 Q Do you know whether Mr. Northwood is the</p> <p>19 agent referred to in this story?</p> <p>20 A No, I don't.</p> <p>21 Q Have you ever asked Mr. Northwood about</p> <p>22 it?</p> <p>23 A Yes. He did say he did call him.</p> <p>24 Q Mr. Northwood told you that he called</p> <p>25 Mr. Lemke?</p>

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<p>1 A I think he said he called him.</p> <p>2 Q When did he tell you that?</p> <p>3 A Boy. Probably two years ago when this</p> <p>4 all started.</p> <p>5 Q Did he -- strike that. Did Mr. Northwood</p> <p>6 give you any specifics about what he</p> <p>7 discussed with Mr. Lemke?</p> <p>8 A I know he discussed -- he said he</p> <p>9 discussed Consolidated's portion with</p> <p>10 them to see if they wanted to sell that</p> <p>11 or not and combine it with this. That</p> <p>12 much he told me. But beyond that, no, he</p> <p>13 didn't say anything else.</p> <p>14 Q Do you intend to call Mr. Northwood as a</p> <p>15 witness at trial?</p> <p>16 A No.</p> <p>17 Q Who is David Pagel, P-a-g-e-l?</p> <p>18 A He is -- he works at Advance Auto, parts</p> <p>19 salesman.</p> <p>20 Q He submitted an affidavit testifying that</p> <p>21 he saw you moving stones from the river</p> <p>22 bed to the embankment, right?</p> <p>23 A Right.</p> <p>24 Q Does he have any knowledge of the issues</p> <p>25 in this lawsuit other than that</p>	<p>1 we had the draw-down, there was all kinds</p> <p>2 of people up there just looking at the</p> <p>3 river bed once the water was gone.</p> <p>4 There's foundations of old buildings out</p> <p>5 there and everything else. It was just</p> <p>6 really interesting for people to see.</p> <p>7 She was just one of many that</p> <p>8 came by. I remembered that she was there</p> <p>9 because I knew she was my neighbor. So</p> <p>10 she, you know, was willing to state that</p> <p>11 she saw me there doing it.</p> <p>12 Q Does she have any firsthand knowledge of</p> <p>13 any of the issues in this lawsuit other</p> <p>14 than seeing you move stones from the</p> <p>15 river bed to the embankment?</p> <p>16 A No.</p> <p>17 Q Do you intend to call her at trial?</p> <p>18 A No.</p> <p>19 Q Do you intend to call any other witnesses</p> <p>20 at trial?</p> <p>21 A Not at this time.</p> <p>22 Q Referring to Exhibit 6, I'm looking at</p> <p>23 page 6 of Exhibit 6, paragraph 81. I'd</p> <p>24 ask you to quick read that.</p> <p>25 A Which one?</p>
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<p>1 particular instance?</p> <p>2 A He knows that you're trying to get ahold</p> <p>3 of it.</p> <p>4 Q Okay. Other than that?</p> <p>5 A No.</p> <p>6 Q Do you intend to call Mr. Pagel as a</p> <p>7 witness at trial?</p> <p>8 A No.</p> <p>9 Q Am I pronouncing that right? Pagel?</p> <p>10 A Pagel. Or Pagel.</p> <p>11 Q Who is Sherri Galle-Teske?</p> <p>12 A Galle-Teske. She's my neighbor by my</p> <p>13 house, next door, actually.</p> <p>14 Q Your neighbor. Her name is Sherri,</p> <p>15 S-h-e-r-r-i, Galle, G-a-l-l-e, Teske,</p> <p>16 T-e-s-k-e. Does that sound right?</p> <p>17 A Right.</p> <p>18 Q And again she submitted an affidavit</p> <p>19 saying she saw you moving stones from the</p> <p>20 river bed to the embankment?</p> <p>21 A I was up there. I don't know if it was</p> <p>22 the first day or second day that she saw</p> <p>23 me. I think it was the second day. It</p> <p>24 was a Sunday.</p> <p>25 I was just throwing rocks. When</p>	<p>1 Q Paragraph 81.</p> <p>2 A Okay.</p> <p>3 Q In response to proposed finding of fact</p> <p>4 81, you describe an instance where Tom</p> <p>5 Witt of CWPCo, you alleged, trespassed on</p> <p>6 your property. Is that correct?</p> <p>7 A That's what he said. He didn't say</p> <p>8 trespass, but he said he was there.</p> <p>9 Q You didn't actually witness this</p> <p>10 incident?</p> <p>11 A No. This is what he told me. He was</p> <p>12 there.</p> <p>13 Q Did he tell you where on your property he</p> <p>14 walked on?</p> <p>15 A He told me he was there with the Army</p> <p>16 Corps of Engineers. And he told me I had</p> <p>17 wetlands. So no. Exactly where his</p> <p>18 footprints were, I don't know.</p> <p>19 Q Where did he say you have wetlands? What</p> <p>20 part of the property?</p> <p>21 A Right around in this area right here</p> <p>22 (indicating). He never did tell me where</p> <p>23 the wetlands were, no. He just told me</p> <p>24 there was wetlands there, which was no</p> <p>25 surprise to me.</p>

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<p>1 MR. LEE: Let the record reflect</p> <p>2 Mr. Moodie was pointing to Exhibit 2.</p> <p>3 And he was pointing to the portion of the</p> <p>4 lot 1 just north of the Green Circle</p> <p>5 Trail.</p> <p>6 EXAMINATION</p> <p>7 BY MR. LEE:</p> <p>8 Q Did I describe that correctly?</p> <p>9 A That is where the wetlands is. He never</p> <p>10 said that's where the wetlands were. He</p> <p>11 just said there were wetlands there.</p> <p>12 Q Okay. You don't know where on your</p> <p>13 property he --</p> <p>14 A No.</p> <p>15 Q -- walked?</p> <p>16 A No.</p> <p>17 Q But you know he was -- he said he was</p> <p>18 with the Army Corps of Engineers?</p> <p>19 A Yes. And I told him at that time, don't</p> <p>20 ever do that again. And he never said</p> <p>21 anything. So --</p> <p>22 Q To your knowledge, has he or anyone at</p> <p>23 CWPCo gone back on your property since</p> <p>24 that incident?</p> <p>25 A Just when they were putting riprap and</p>	<p>1 have an access point.</p> <p>2 Q Is there anything that we haven't covered</p> <p>3 today that you think is relevant to the</p> <p>4 dispute and which you intend to present</p> <p>5 evidence at trial?</p> <p>6 A I'll probably rely on all the</p> <p>7 declarations and the exhibits that I've</p> <p>8 already submitted. I'll probably get the</p> <p>9 comparables that you mentioned. You</p> <p>10 know, there may be some things that I</p> <p>11 will bring up that I haven't thought of</p> <p>12 yet.</p> <p>13 Q Okay. As you sit there today, are there</p> <p>14 any additional facts that you intend to</p> <p>15 raise at trial other than what we've</p> <p>16 covered and what's in the filings?</p> <p>17 A I don't think so.</p> <p>18 Q All the -- strike that. Go ahead.</p> <p>19 A I have requested -- I don't know if you</p> <p>20 know it or not because my first request</p> <p>21 was -- I didn't have my address and phone</p> <p>22 number on, so I refiled it. I would like</p> <p>23 to get the visitors logs from</p> <p>24 Consolidated. So that might come up.</p> <p>25 Q Okay.</p>
126	128
<p>1 the stones on.</p> <p>2 Q Did anyone from CWPCo go onto any portion</p> <p>3 of the upland property, obviously,</p> <p>4 excluding parcel B, since that incident,</p> <p>5 since the incident you describe in your</p> <p>6 response to PFOF 81?</p> <p>7 A I don't know.</p> <p>8 Q Do you have any reason to think that they</p> <p>9 did?</p> <p>10 A They may have used the driveway to get</p> <p>11 their equipment in there. I don't know.</p> <p>12 Q What do you base that on?</p> <p>13 A Because I got the only driveway that can</p> <p>14 get in there other than they have to jump</p> <p>15 the curb. And maybe that's what they</p> <p>16 did.</p> <p>17 Q But they can drive -- they can drive</p> <p>18 their vehicles across the top of the</p> <p>19 dike, can't they?</p> <p>20 A They can.</p> <p>21 Q And they have a building down near the</p> <p>22 dam which gives them an access point,</p> <p>23 right?</p> <p>24 A I don't know if they have a building.</p> <p>25 They may. I don't know. I think they</p>	<p>1 A For this period. Or I put in there, you</p> <p>2 know, if you don't want to -- I know</p> <p>3 there's things on there you don't want me</p> <p>4 to see, other visitors that came. But if</p> <p>5 you want to give me a letter saying that</p> <p>6 I was there and had a meeting with Mark</p> <p>7 Anderson on the date, that's fine.</p> <p>8 That's what I'm looking for, if</p> <p>9 you don't want to produce all the</p> <p>10 visitors logs. And if I could come up</p> <p>11 with other ways of proving my meeting,</p> <p>12 I'll present them.</p> <p>13 Q Okay. Is there any reason, as you sit</p> <p>14 here today, to believe that any of the</p> <p>15 statements that you made in your summary</p> <p>16 judgment submissions are inaccurate or no</p> <p>17 longer accurate?</p> <p>18 A I tried to be as truthful as I could.</p> <p>19 Q I understand that. I'm just wondering if</p> <p>20 anything has come to light since then</p> <p>21 that made you -- that makes any of those</p> <p>22 statements inaccurate?</p> <p>23 A I don't think so.</p> <p>24 MR. LEE: I don't have any other</p> <p>25 questions. We're done.</p>

129

1 (Whereupon, the deposition of
2 Robert D. Moodie terminated.)
3 * * * * *

130

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6
7 REPORTER'S CERTIFICATE
8
9
10 STATE OF WISCONSIN)
11) ss.
12 COUNTY OF WOOD)
13
14 I, Meredith A. Kroening, do hereby
15 certify the foregoing transcript is a true and
16 correct transcription of my stenographic notes
17 taken in this proceeding.



Meredith A. Kroening
MEREDITH A. KROENING

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